

IN THE UNITED STATES DISTRICT COURT
OF WESTERN PENNSYLVANIA

JULIE A. SU, Secretary of CIVIL DIVISION
Labor, United
States Department of No. 18-1608
Labor,
 Plaintiff,

vs.

COMPREHENSIVE HEALTHCARE
MANAGEMENT SERVICES, LLC,
et al.

Defendants.

Transcript of BENCH TRIAL held on JANUARY 11, 2024
United States District Court, Pittsburgh, Pennsylvania
BEFORE: HONORABLE WILLIAM S. STICKMAN, IV, DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: Alejandro Alfonso Herrera, Esq.
 Mohamed E. Seifeldein, Esq.
 Eric Unger, Esq.
 U.S. Department of Labor

For the Defendant: Jeffrey Schwartz, Esq.
 Marla N. Presley, Esq.
 Ann Zebrowski, Esq.

Court Reporter: Karen M. Earley, RDR-CRR
 Joseph F. Weis, Jr.
 U.S. Courthouse
 Room 6260
 700 Grant Street
 Pittsburgh, PA 15219
 412-201-2660

Proceedings reported by mechanical stenography.
Transcript produced by computer-aided transcription.

I N D E X

- - -

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
<u>PLAINTIFF'S WITNESSES:</u>				
Michael Murray	4	161	184	--
Thomas Slagle	186	208	--	--

1 P R O C E E D I N G S

2 (January 11, 2024, 9:30 a.m. In open court.)

3 THE COURT: I understand there is discussion
4 about early dismissal on Friday. What's the general
5 consensus? Is there a general consensus?

6 MR. SCHWARTZ: I say between 3:00 and 3:30
7 should be fine.

8 THE COURT: That's more than reasonable on a
9 holiday weekend. I assume some of you are taking
10 flights. No worries at all.

11 MR. SCHWARTZ: Thank you.

12 THE COURT: Are you ready to go, Mr. Herrera?

13 MR. HERRERA: Yes, Your Honor.

14 THE COURT: You can call your next witness.

15 MR. HERRERA: We will call Michael Murray. I
16 will go and collect him from the witness room.

17 THE COURT: Okay. Approach and raise your
18 right hand.

19 MICHAEL MURRAY, a witness herein,
20 having been duly sworn, testified as follows:

21 THE COURT: Have a seat. Adjust the
22 microphone so it's where you need it to be. Please
23 state your name for our court reporter.

24 THE WITNESS: My name is Michael Murray,
25 M-i-c-h-a-e-l, M-u-r-r-a-y.

Michael Murray - Direct by Mr. Herrera

1 DIRECT EXAMINATION

2 BY MR. HERRERA:

3 Q. Good morning, Mr. Murray. First question for you
4 sir, are you currently employed?

5 A. I'm employed by the U.S. Department of Labor.

6 Q. What do you do with the U.S. Department of Labor?

7 A. Security IT specialist. I work with the Office of
8 the Chief Information Officer.

9 Q. What is the Office of the Chief Information
10 Officer?

11 A. Basically the technology support office for the
12 Department of Labor.

13 Q. What does that office do just in general terms tell
14 us, please?

15 A. Well, we manage all the IT hardware and software
16 that is used by the department.

17 Q. What is your role, specifically, as an IT
18 specialist?

19 A. Specifically I work on information security, just
20 making sure the Department of Labor's information
21 systems are meeting the security requirements.

22 Q. Did you have employment prior to working with what
23 I'll all OCIO?

24 A. Yes.

25 Q. What was that?

Michael Murray - Direct by Mr. Herrera

1 A. I was a contractor for a company called
2 GovernmentCIO, and that's all one word, and we had a
3 contract with the Department of Labor solicitor's
4 office.

5 Q. What is the business of GovernmentCIO?

6 A. It does a lot of contracting services for the
7 federal government. It focuses on information
8 technology.

9 Q. What was your role within GovernmentCIO?

10 A. So I was an IT specialist. I did some database
11 work and some security work.

12 Q. What do you mean by database work?

13 A. For the solicitor's office, one of our tasks was to
14 support a system we use. It has a database. We create
15 reports for that and managed the database for that and
16 we also provided litigation support services.

17 Q. What kind of litigation support services?

18 A. We would help them with large data files.

19 Q. What kind of files? Describe them for me, please.

20 A. They could be an Excel spreadsheet or a text file
21 called comma-separated value or CSV for short. In some
22 cases, we would get files that were exported from
23 database systems.

24 Q. What was the nature of the support you provided
25 with respect to litigation and large files as you

Michael Murray - Direct by Mr. Herrera

1 described them?

2 A. We would help just open the files. Often they
3 didn't have the tools -- the solicitor's office didn't
4 have the tools to open the files and view the data
5 inside them. So we would first take a look at the data
6 and tell them what was in there.

7 Q. What was the technical issue, why couldn't they
8 open them?

9 A. Typically, they would use Microsoft Excel to open
10 these files and if there is more than one million rows
11 in the data file, then Excel will not display them all.
12 It will cut them off.

13 Q. Why not?

14 A. It's just a limitation in Excel with over a million
15 rows of data and it doesn't go beyond that.

16 Q. Mr. Murray, how long did you work for
17 GovernmentCIO?

18 A. I started 2012, started my new job in 2022, so it
19 was ten years total.

20 Q. Can you just describe or summarize for us your
21 education, please.

22 A. I have a bachelor's degree from Johns Hopkins
23 University and I have a master's degree from George
24 Mason University in Virginia.

25 Q. When did you obtain your master's degree?

Michael Murray - Direct by Mr. Herrera

1 A. It was in 2010.

2 Q. What is that degree in?

3 A. It's information systems.

4 Q. Mr. Murray, do you have any familiarity with the
5 Fair Labor Standards Act?

6 A. I've heard of it.

7 Q. What is your general understanding of it, if any?

8 A. My understanding is that it governs wage loss. So
9 for people who work over 40 hours, they have to get paid
10 time and a half if they are nonexempt and also minimum
11 wage I believe is covered by it.

12 Q. Mr. Murray, are you an attorney?

13 A. I am not.

14 Q. Have you ever been an attorney?

15 A. No, I haven't.

16 Q. Do you conduct legal research, sir?

17 A. I do not.

18 Q. Have you ever worked on a matter involving the
19 FLSA, Fair Labor Standards Act, either within
20 GovernmentCIO or the OCIO office you described?

21 A. Yes.

22 Q. Tell me about that work, please.

23 A. So these cases come from the Wage and Hour Division
24 in the Department of Labor and they involve the
25 solicitor's office I guess when they go to trial.

Michael Murray - Direct by Mr. Herrera

1 So, typically the Wage and Hour investigators
2 will look at the data and do their back wage
3 computations, but if the files are too big, then my
4 company at the time was asked to assist with the large
5 files.

6 Q. What data are they looking at, what are you
7 referring to?

8 A. Typically payroll data, cases involving payment to
9 employees.

10 Q. Where does this payroll data come from?

11 A. Provided by the companies that are involved in the
12 case.

13 Q. If the data is so voluminous that Microsoft Excel
14 cannot access it because it has more than a million
15 rows, are there any options to access that data with a
16 different program?

17 A. Yes.

18 Q. Tell me about that, please.

19 A. So we can use Microsoft Access. It's a different
20 Microsoft application for databases. For very really
21 large data sets, we can use Microsoft SQL server. It's
22 a more robust enterprise scale database tool.

23 Q. In general terms with someone who is not familiar
24 with the software, can you explain what Microsoft Access
25 is?

Michael Murray - Direct by Mr. Herrera

1 A. It's a desktop database application meaning it's
2 not installed on the server. So it's just running off
3 your laptop or your desktop.

4 It can contain more data or display more data
5 than Excel can and it also allows you to store data in
6 different tables. It's kind of a container for data
7 that consists of columns and rows and you can work with
8 the different tables.

9 Q. What do you mean by tables?

10 A. So a table is just a structure for storing the
11 data. You can think of it as columns across the top,
12 which are the fields, and rows, and each row is a unique
13 instance of data within that table. You can have one or
14 more millions of rows.

15 Q. So I have seen in Microsoft Access they refer to
16 them as individual sheets within an Excel file. Is that
17 what you are describing?

18 A. It's similar. It would look the same if you opened
19 them up but Microsoft Access allows you to do more
20 easily work with the tables together than Excel does.

21 Q. What specifically you, Mr. Murray, in these FLSA
22 cases you had involvement with, why were you asked to
23 get involved?

24 A. Initially because I had familiarity with the tools
25 like Microsoft Access and Microsoft SQL server.

Michael Murray - Direct by Mr. Herrera

1 Q. What is your familiarity?

2 A. As part of my studies I learned about databases and
3 also the rest of our work with the solicitor's office
4 was supporting the database, part of the application
5 that we operated for them.

6 Q. Within your regular duties, sir, either at
7 GovernmentCIO or OCIO, do you use Microsoft Access?

8 A. I do.

9 Q. For what purposes?

10 A. Any time I have some data I want to work with and
11 create reports for, I find it easy to use because I have
12 used it quite a bit.

13 Q. Were these FLSA matters, Mr. Murray, what is the
14 objective of importing this data into Microsoft Access,
15 what is the point of doing that?

16 A. Once we have it in Access, then I can work with the
17 attorneys to determine what they want to know about the
18 data. They'll ask me questions, how many employees,
19 typical question they'll ask. So I can run a query in
20 the database to tell me how many unique employees are in
21 the data.

22 Q. What is this term "query?"

23 A. So query is a term that's standard for databases in
24 general, not just Microsoft Access, but when there's a
25 formal language called structure query language or SQL

Michael Murray - Direct by Mr. Herrera

1 and that is used to convert questions into a language
2 that the database can understand and it can return
3 results from the data.

4 Q. When you're asked to assist in these matters,
5 Mr. Murray, who determines your role, if anyone?

6 A. I guess at the time it was the solicitor's office,
7 leadership, their managers would determine I should
8 assist with the case.

9 Q. Did they give you directives as part of determining
10 the role?

11 A. They would tell me to work -- who to work with. I
12 work with the attorneys involved in the matter and we
13 would meet fairly regularly to discuss the data and to
14 find out their requirements.

15 Q. What are some examples of some requirements they
16 have given you in the past?

17 A. So they'll want to know beyond simple stuff like
18 how many employees, they would like to know how many
19 hours the employees worked in each day or week or month
20 or year. It could be any time period. How much they
21 were paid, what their pay rate was, those are common
22 questions.

23 Q. At any point in these processes, are you asked to
24 provide some kind of output?

25 A. Yes. Typically, they ask for reports. Most often

Michael Murray - Direct by Mr. Herrera

1 that would be in the form of an Excel spreadsheet and
2 formatted for viewing purposes, easier to read.

3 Q. What do these reports show?

4 A. They may show a list of employees and work dates,
5 how many hours they worked, how much they were paid for
6 a particular period.

7 Sometimes it's summed up so the total amounts
8 earned for an employee or for an entire year or for the
9 entire period in question.

10 Q. Has anyone within the DOL ever directed you to
11 compute back wages in an FLSA matter that you have been
12 involved in?

13 A. Yes.

14 Q. In general terms can you please explain for the
15 Court the process you undertake when you are directed to
16 compute back wages in an FLSA matter or the Department
17 of Labor?

18 A. Generally we receive the data from the attorneys.
19 They acquired it from the defendants in the case. I'll
20 look at the data, try to understand it, what's in there,
21 how the tables are structured, where the different types
22 of information are and then going on in the process, the
23 attorneys will ask for me to compute hours worked and
24 determine if there are any back wages due that they
25 weren't paid for or overtime hours.

Michael Murray - Direct by Mr. Herrera

1 Q. How were you able to determine that?

2 A. They give me criteria for determining -- the data
3 is different for every company. So the criteria can be
4 a little bit different. It fits the data.

5 They'll tell me add up the hours for week,
6 hours over 40 would be overtime hours and to look at the
7 pay data to see if they were paid for those hours.

8 Q. When you do this, Mr. Murray, do you conduct your
9 own analysis to determine what payrolls should be
10 applied to the data you receive?

11 A. No. The attorneys tell me the rules and I just
12 convert them into SQL queries that the database can
13 understand.

14 Q. What kind of format is this data in that the
15 solicitor's office sends you to examine?

16 A. Frequently it's the CSV, comma-separated value, and
17 that stores if you open it up using Notepad on your
18 desktop, it would show a bunch of text separated by
19 commas and the commas indicate different fields within a
20 kind of table structure.

21 Each row in the file, each line in the file is
22 a record. So it's a way of storing tabular data.

23 Q. Just to be clear, Mr. Murray, where does this data
24 come from?

25 A. Typically it's coming from a company's payroll

Michael Murray - Direct by Mr. Herrera

1 system. They can export it. CSV is a very universal
2 standard for exporting data. It can be shared with
3 other systems.

4 Q. When you receive data that you understand to be
5 from an employer's payroll system, at any point do you
6 modify the substantive values in that data?

7 A. No.

8 Q. How is the data sent to you?

9 A. If the file is very large, it might be through a
10 tool called Excel Unit, it's kind of like Dropbox. The
11 Department of Labor uses that to transfer large files.

12 I also received files some years ago on CDs,
13 DVDs, on that kind of median but not recently.

14 Q. After you received data that you understand to be
15 payroll data, what is the first thing you do with it, if
16 anything?

17 A. Well, the first thing I want to do is open it up.
18 So whatever tool that will allow me to view the data.
19 Then I'll kind of make an inventory. I will look at how
20 many tables or different files there are, what fields
21 are in those files, what their names are, how many rows
22 and records each file might have, could be thousands or
23 millions.

24 I also look at the data types of each field
25 because when data is stored in a database, it usually

Michael Murray - Direct by Mr. Herrera

1 has a type associated with, a date, date type, numbers
2 are numerical. Probably the most common is just text
3 which can be anything.

4 Q. After you have reviewed the data, what, if
5 anything, do you do next?

6 A. So, I'll arrange to meet with the attorneys. I'll
7 discuss what the data looks like, what's in there. And
8 then they'll give me a little information about what the
9 case is about and what they're looking for.

10 Q. At any point if you are directed to compute back
11 wages for an FLSA case, do you create any methodology or
12 written summary of the process you have undertaken?

13 A. Yes.

14 Q. Tell me about that, please.

15 A. So, as I'm creating these queries and going through
16 the different steps of importing the data and writing
17 the queries, I'm basically documenting what I'm doing.
18 I describe what the queries are, roughly how they work
19 and then -- so, it's a summary from beginning to the end
20 of how the data was imported, query, and then the back
21 wage reports are produced.

22 Q. Do you determine the methodology on your own?

23 A. Yes, depending on the tool. So the queries are
24 based on the questions that the attorneys have but I
25 have to convert all that into Microsoft Access or SQL

Michael Murray - Direct by Mr. Herrera

1 server queries.

2 Q. Can you give us an example of some of the
3 methodological steps you would take when dealing with
4 data?

5 A. Often we need to -- if you have different tables,
6 you want to be able to join those tables. They have to
7 be key field. Key field is something that is common in
8 both tables that can relate to data.

9 So there is a methodology to determine what
10 the key is and how to join them. If we're working with
11 dates and we need to aggregate or summarize the data by
12 dates, we talk about what date was used. Sometimes the
13 date is in a text format so it has to be converted into
14 a date format and I do that by creating a new field
15 because I don't want to change the original data.

16 I just use the original data to create a new
17 field that in a date format. That makes it easier to
18 summarize the data by date.

19 Q. The process you described, Mr. Murray, on this
20 methodology, at any step in it do you modify the
21 substantive values in the underlying data you've
22 received?

23 A. No, I don't.

24 Q. In your experience with FLSA matters, Mr. Murray,
25 have you ever dealt with a situation where there is data

Michael Murray - Direct by Mr. Herrera

1 missing from an employer's payroll data?

2 A. Yes.

3 Q. What happens when there is data missing from
4 payroll?

5 A. So if I find some data missing, it could be either
6 values in a field, the fields are blank, or maybe
7 there's a time period that's not accounted for, maybe
8 some weeks missing. In either case, I'll describe what
9 is missing and I'll provide that to the attorneys and
10 ask them for their assistance.

11 Q. From examining the data on your own, can you tell
12 why the data is missing?

13 A. No. I just see that it's missing.

14 Q. Have you ever had an instance where the missing
15 data affected your ability to summarize the payroll data
16 from the employer?

17 A. Yes. So if there's certain time periods missing,
18 obviously, you can't summarize the data for those time
19 periods but even if the field level -- let's say I have
20 been asked to determine how many hours an employee was
21 on the clock for a shift, if I'm missing one of the
22 clock times, then I can't determine how many hours total
23 that they were working.

24 Q. So this example you're saying you see instances in
25 payroll data at times where there's been an in punch but

Michael Murray - Direct by Mr. Herrera

1 no out punch?

2 A. Correct or vice versa.

3 Q. So you say may consult with solicitors. Why,
4 what's the purpose of asking them?

5 A. Well, they've asked me to summarize how many hours
6 were worked on a day for each employee. If I can't do
7 that, then I need direction from them how they want me
8 to proceed.

9 Q. When this has occurred in the past, a missing value
10 or missing set, is there any follow-up with the
11 employer?

12 A. My understanding is yes. They'll ask the employer
13 if they can provide the missing data.

14 Q. In these instances where there's missing data, have
15 you ever been involved in a matter where the data never
16 arrives, it's permanently missing?

17 A. Yes.

18 Q. What happens then?

19 A. The attorneys may tell me to take an alternative
20 approach. Say a person is missing a time punch, we
21 could either may say just put eight hours in, assume
22 they worked eight hours, or we can work. Determine some
23 kind of average, what is an average workday for an
24 employee and use that to substitute.

25 Q. Who makes those determinations, Mr. Murray?

Michael Murray - Direct by Mr. Herrera

1 A. It's up to the attorney.

2 Q. Do you ever independently decide on your own how to
3 account for missing data in payroll information?

4 A. No. I don't proceed until the attorneys give me
5 some kind of direction or instruction.

6 Q. Mr. Murray, have you ever testified in an FLSA
7 litigation on behalf of the Department of Labor?

8 A. Yes.

9 Q. How often has that happened?

10 A. I've testified in court at least four or five
11 times, including this.

12 Q. For what purpose did you testify?

13 A. I did in each case I had assisted with creating
14 back wages computations for large data sets. So I
15 described the methodology.

16 Q. Is that why you're here today, sir?

17 A. Yes.

18 Q. I am going to switch gears now to this case,
19 Mr. Murray.

20 Have you ever heard of an entity called
21 Comprehensive Healthcare Management Services?

22 A. Yes.

23 Q. What, if anything, do you know about that entity?

24 A. I understand it's a company that runs a number of
25 nursing home and rehabilitation facilities in

Michael Murray - Direct by Mr. Herrera

1 Pennsylvania.

2 Q. What's that understanding based on?

3 A. When I first learned about CHMS in 2018, an
4 attorney at the Department of Labor was working with me
5 on that case and described basically the background of
6 it. Before that, I had not heard of CHMS.

7 Q. Why is it that you became involved?

8 A. For this case, they had some files that were too
9 large to open. So they were asking for my assistance in
10 processing the data.

11 Q. As a general matter, Mr. Murray, did you provide
12 any assistance in this case?

13 A. Yes, I did.

14 Q. What did you do?

15 A. So the standard kind of assistance. I helped
16 import the data into a tool, in this case, Microsoft
17 Access, which allowed us to work with it over a million
18 rows of data and then created the queries and I used the
19 queries to create back wages to report.

20 Q. When you say "the data," what data are you
21 referring to?

22 A. I'm referring to all the files that were provided
23 to me from the attorney, from CHMS through the attorney.

24 Q. What were these files?

25 A. They were a set of Excel and CSV files

Michael Murray - Direct by Mr. Herrera

1 contained -- some of them contained pay data information
2 and other files contained timestamps or time data. I
3 called them pay data and time data.

4 There were multiple files for each of the
5 facilities that CHMS operates. Each facility would have
6 at least one time data file and one pay data file.

7 Q. Do you know how many facilities are involved in
8 this case?

9 A. 15.

10 Q. Are all 15 within the data you're describing,
11 described depicted?

12 A. Yes.

13 Q. Do you have any knowledge as to how these 15
14 buildings conducted their payroll?

15 A. I understand they had collected their data and sent
16 it to I guess the corporate headquarters for payroll
17 processing.

18 Q. Can you tell me anything, for instance, about the
19 schedule for payroll, how often it was run?

20 A. So their work schedules were two weeks. They got
21 paid every two weeks but each facility had -- could have
22 different schedules for payment.

23 Q. Through your work in this matter, did you gain any
24 understanding as to the types of compensation the
25 employees of these 15 buildings received?

Michael Murray - Direct by Mr. Herrera

1 A. Looking at the payroll data, I could see that they
2 were paid different categories of pay for each pay
3 period.

4 Q. Mr. Murray, are you familiar with the idea of the
5 hourly versus a salaried employee?

6 A. Yes.

7 Q. What is your understanding of that?

8 A. My understanding is that if you are a salaried
9 employee, you are exempt from the FLSA requirements. If
10 you are an hourly worker, then FLSA applies.

11 Q. What do you mean it applies, if you know?

12 A. My understanding mostly for overtime. That if you
13 are a salaried exempt employee, then if you work over 40
14 hours a week, you don't get extra pay for that time.
15 But if you are an hourly employee, you would be paid a
16 premium for the hours over 40.

17 Q. Do you know what that premium is?

18 A. One and a half times the regular rate.

19 Q. What's the regular rate?

20 A. That would be the base rate for what you are
21 normally paid per hour.

22 Q. Just to clarify, Mr. Murray, when you received this
23 pay and time data that was represented to you from the
24 defendants, what, if anything, did you do to sort the
25 data, categorize the data, after receiving it?

Michael Murray - Direct by Mr. Herrera

1 A. You mean to describe it or to import and start
2 working with it?

3 Q. We'll start there. To import it.

4 A. So Microsoft Access has tools built into it that
5 will allow you to import data from different formats
6 including Excel and CSV.

7 So I used that tool to create two tables in
8 Microsoft Access, two primary tables one for payroll
9 data and the other time data and file by file, I had to
10 import into the respective table.

11 Q. How did you import it?

12 A. So Microsoft Access has a wizard. You say I want
13 to import an Excel file and the wizard pops up and asks
14 you where the file is, what's the name of it and then
15 where do you want to save it to. You basically push a
16 button and it imports the data and appends it to that
17 table.

18 Q. Did you personally do this imported data?

19 A. I had an assistant help with importing the data.

20 Q. Who is that?

21 A. Elsa, she was a contractor for the solicitor's
22 office that I provided an SOP I had used previous,
23 receive the data more than once.

24 Q. What is SOP?

25 A. Standard operating procedure. So it's kind of step

Michael Murray - Direct by Mr. Herrera

1 by step which files to import and where to save them.

2 Q. Did you oversee Ms. Reed's import of the data?

3 A. Yes. I verified it. We actually worked together
4 online much of it.

5 Q. Mr. Murray, what is the first time you received pay
6 or time data for the CHMS buildings?

7 A. I'm sorry. What kind of data?

8 Q. Pay or time data.

9 A. It was towards the end of 2018. I would say around
10 October, September or October.

11 Q. Where did you get it from?

12 A. The solicitor's office. At the time, I was a
13 contractor so we had managers from the solicitor's
14 office that directed our activities.

15 There's a group in the solicitor's office
16 called the Litigation Support Unit and they're
17 responsible for receiving data and then providing it to
18 us, kind of a go between.

19 Q. Do you know where that data came from?

20 A. My understanding it came from CHMS.

21 Q. What is the volume of the data you received in
22 2018?

23 A. It was -- I forget the number of gigabytes or
24 megabytes but it was several dozens files and probably
25 the largest files had over a million rows or all

Michael Murray - Direct by Mr. Herrera

1 together they would have a million rows.

2 Q. Was it possible to aggregate those files you
3 receive in 2018 within Excel?

4 A. Not all of them, not that one million row limit for
5 the time data. The payroll data was for a two-week
6 period, so there were less rows.

7 Q. What format was the data in that you received in
8 2018 from CHMS?

9 A. Some files were in Microsoft Excel. The time data
10 may have been, but they had many files. Then CSV, the
11 payroll data.

12 MR. SCHWARTZ: Your Honor, if I may, I
13 certainly don't want to prevent counsel from making
14 whatever record he wants to make. We don't intend to
15 cross Mr. Murray on a lot of this foundational stuff.

16 We believe the only issue that really is going
17 to be something we're going to want to address to the
18 Court in terms of cross-examination is his conclusions
19 and how the information came through.

20 It's up to them. I just want to make --

21 THE COURT: Am I correctly summarizing your
22 position that you are not challenging the integrity of
23 his methodology? You are only calling into question
24 some of his conclusions?

25 MR. SCHWARTZ: That's exactly right.

Michael Murray - Direct by Mr. Herrera

1 THE COURT: Mr. Herrera, does that in any
2 way -- I really didn't read this as an objections. This
3 is more or less a housekeeping matter.

4 I think they are willing to stipulate as to
5 the foundation of how the method he used to get to his
6 conclusion, while they might quibble with those
7 conclusions, I think they will vigorously, does that
8 alleviate any concern you would have about the need to
9 foundation this?

10 MR. HERRERA: Only if they're willing to also
11 agree that the written methodology that Mr. Murray
12 created and the reports are not going to be the subject
13 to a hearsay challenge or something to that effect.

14 I'm going through this to lay foundation in
15 case there is a hearsay objection to these reports.

16 THE COURT: What is your response to that?

17 MR. SCHWARTZ: No objection.

18 THE COURT: They're not going to raise that
19 objection.

20 MR. HERRERA: Then, Your Honor, I will move
21 more quickly through this but I think, and, of course, I
22 will do it whatever way you wish, Your Honor, but I
23 think because of the complexity as to what is happening
24 here, I think it is beneficial for the Court to walk
25 through this.

Michael Murray - Direct by Mr. Herrera

1 THE COURT: I understand. Look, this is your
2 case. You make the record you want to make for your
3 case.

4 I would just ask you in light of the fact they
5 are not challenging his methodology, I think that it's
6 probably more effective for our time as quickly as you
7 feel comfortable doing, to get to his ultimate
8 conclusions and what you are really substantively
9 raising him for.

10 I never want to tell a lawyer how to try his
11 or her case. So that's entirely you and your
12 preparation.

13 They have given you that offer and I'm willing
14 to take them up on that word and I'll hold that against
15 them if later today they want to revisit that, I'll hold
16 them to what they say, you can rest assured to that.

17 So, it's ultimately your call but I just want
18 you to know you have that option. I encourage you to
19 take it to the extent you can get in a more efficient
20 way to your conclusions, but, again, I'm not going to
21 micromanage how you try your case.

22 MR. HERRERA: Understood, Your Honor, and I
23 will move through this more quickly.

24 If at any own point you think I am belaboring
25 it, please tell me. The approach because this is so

Michael Murray - Direct by Mr. Herrera

1 completed, I have had a hard time understanding it so I
2 want to make sure Your Honor understands it. That's why
3 I am taking the time but I will move it along if Your
4 Honor feels like I am not being productive.

5 THE COURT: That might be a high order. I'm a
6 classics major, so I'll do my best.

7 MR. HERRERA: Yes, Your Honor.

8 Q. Mr. Murray, as a general nature of the data, the
9 pay and time data, for example, how many employees were
10 in the data you received in 2018?

11 A. I can't recall the exact number. Probably around
12 five or six thousand at that time.

13 Q. Was this across the 15 buildings you mentioned?

14 A. Yes, total.

15 Q. What was the time period of the data you received?

16 A. The time data started in August of 2015 and then at
17 the time, it went through August of 2018, about three
18 years.

19 Q. At any point, Mr. Murray, after 2018, did you ever
20 receive any additional data relating to CHMS?

21 A. Yes.

22 Q. When did that happen?

23 A. Every few months, in some cases to a year, we
24 received supplemental data.

25 Q. What was the supplemental data?

Michael Murray - Direct by Mr. Herrera

1 A. It would be more files that would bring the data
2 more up to date. So after three years, six months, they
3 would provide three or six months more data.

4 Q. Do you know how many supplements in total you
5 received relating to CHMS' time and pay data?

6 A. I recall six.

7 Q. What formats were these supplements in?

8 A. They are all in Excel or CSV format.

9 Q. These additional data, did they continue to reflect
10 data from all 15 buildings?

11 A. Yes.

12 Q. Other than providing data for new periods, at any
13 point during the supplements did prior data change?

14 A. For the most recent supplement we received, they
15 provided updates to the time data for the entire period
16 going back to August 2015.

17 Q. Explain what that means, please.

18 A. So, my understanding is that they manually entered
19 some of the missing time punches from I guess another
20 source they had and so that filled in some of the
21 missing time punches that were in the previous
22 provisions of data.

23 Q. Let's talk about that for a minute. There were
24 missing time punches in the earlier sets of data?

25 A. Correct.

Michael Murray - Direct by Mr. Herrera

1 Q. How often did that happen or did you see it?

2 A. It was about two percent of the records.

3 Q. Just as a general matter, how many -- first of all,
4 what do you mean by record?

5 A. A record is a row on a table. For time data, we
6 had about two million records. Now it's up to 2.6
7 million. Each record of the time data would be a shift
8 or a set of punch times, actually. You can have more
9 than one set of punch times for a shift that an employee
10 made when they were working.

11 Q. So prior to the most recent set, how many of these
12 records you had of a missing punch, if you know,
13 approximately?

14 A. It would be before the most current one, it was
15 around 46,000 records that were missing one or the other
16 punch. There were some cases where the records were
17 missing both, there was about 150,000 of those.

18 Q. How many missing punches are there in the most
19 recent time set?

20 A. So where there's both missing time punches, there
21 is over 200,000 and then for this one or the other time
22 punch missing is about 26,000.

23 Q. Where the new data provided what was previously
24 missing a punch, for purposes of your summary, did you
25 just take that inserted data at face value?

Michael Murray - Direct by Mr. Herrera

1 A. Yes.

2 Q. For these records you're describing that have no
3 punches, are they reflected in your summary of back
4 wages due?

5 A. No.

6 Q. I want to spend some time walking through the data
7 now, Mr. Murray.

8 MR. HERRERA: Your Honor, we're going to bring
9 up an electronic copy that was entered as JX52 through
10 JX58. Mr. Murray described this as voluminous. The
11 only way I can reasonably do it is through the laptop.

12 I am going to speak clearly in describing the
13 files and the row numbers so that the record is clear
14 which portions of the JXs I am talking about.

15 THE COURT: Okay.

16 MR. HERRERA: Your Honor, let the record
17 reflect I'm going to access what the parties have
18 entered as JX58.

19 THE COURT: Okay.

20 Q. While my computer loads, Mr. Murray, I'm going to
21 show you on the screen a copy of a file that is labeled
22 2020A. Do you recognize what I am showing you on the
23 screen, Mr. Murray?

24 A. Yes.

25 Q. What is it?

Michael Murray - Direct by Mr. Herrera

1 A. That is one of the files I received from the
2 employer. It's a time data file.

3 MR. HERRERA: Your Honor, now my computer is
4 working, I am going to for the record, perhaps we'll see
5 if this will allow me to try to identify where within
6 JX58 this specific file is from.

7 Let the record reflect I am opening the folder
8 labeled JX58. There are two folders within that. One
9 is labeled pay data. The other is labeled time data.
10 I'm going to now access time data.

11 THE COURT: This is within JX58 itself?

12 MR. HERRERA: Yes.

13 THE COURT: Okay.

14 Q. Mr. Murray, the file that I have opened for you in
15 Excel that is labeled 2020A, I am going to now click on
16 a file within the time data folder of JX58 to attempt to
17 open it.

18 It is now opened or referred back to the file
19 that is on the screen. The process that I just did, to
20 your understanding, the file that is labeled on your
21 screen as 2020A, did that come from JX58 time data?

22 A. Yes.

23 Q. Okay. If you need me to zoom in, Mr. Murray, so
24 you can see better, tell me.

25 A. That's fine.

Michael Murray - Direct by Mr. Herrera

1 Q. In general terms, can you tell me what we're
2 looking at please.

3 A. The time data file will have a set of columns
4 running from A -- I'm not sure how far -- down to Z and
5 then each row is a record of an employee punching in
6 and/or out for a facility. You can see the facility in
7 the column F there, company, C and D, sorry. I
8 generally went with facility.

9 Q. Mr. Murray, this file, 2020A, did this come to your
10 understanding from the defendants? Is this the file
11 they sent over?

12 A. Yes.

13 Q. At any point after receiving this file, did you
14 modify any of the values within this Excel sheet?

15 A. No, I didn't.

16 Q. Let's begin talking through some of these headers,
17 Mr. Murray, so we can understand your later testimony
18 accurately. What does the name column B refer to in
19 2020A?

20 A. Employee name.

21 Q. What does the facility column D refer to, sir?

22 A. That is where they punched in that day.

23 Q. I'm going to scroll over to column I, Mr. Murray.
24 What, if anything, do you know what D-E-P-T means within
25 this data?

Michael Murray - Direct by Mr. Herrera

1 A. That is short for department. It's a code number
2 for the departments which are kind of like positions or
3 roles that the employee performed.

4 Q. At any point in your work on this matter,
5 Mr. Murray, did you use this column, the dept column?

6 A. Yes.

7 Q. For what purpose?

8 A. The attorney provided a list of the departments
9 they said should be excluded from back wage
10 calculations.

11 Q. What do you mean by that?

12 A. She said it was -- they were exempt. They should
13 be excluded from the work. So administrator is one of
14 those departments.

15 Q. Are you saying, sir, that your summary does not
16 include any back wages for an administrator position
17 within this data?

18 A. Yes.

19 Q. Why did you exclude it?

20 A. The attorney in the case instructed me to remove
21 those departments from the back wage calculations.

22 Q. Let's continue going through this sheet,
23 Mr. Murray. I'm going to zoom in slightly.

24 Can you tell me what column O date refers to,
25 please.

Michael Murray - Direct by Mr. Herrera

1 A. That's a workday or a shift day, shift date.

2 Q. Do you know what column P means?

3 A. That's a time stamp. If you actually click on it,
4 you can actually see a full date and time and it's when
5 the employee clocked in for the day or for the shift.

6 Q. Mr. Murray, what I highlighted here on row 8, it
7 says 9:18 a.m. on January 9, 2020. Is that a punch in
8 for this employee on that date?

9 A. Yes.

10 Q. What is column Q, hours?

11 A. That is the out time. So when they punched out at
12 the end of their shift or end of the period worked,
13 there would be a date time in that field.

14 Q. What does column R exceptions refer to, if you
15 know?

16 A. The first set of data this was called rate
17 deduction or BD. It contains a number of minutes that
18 were for the employee's break time where they would be
19 off the clock, supposed to be off the clock.

20 Q. Mr. Murray, you see here in row 8, for example,
21 there is a punch in for Ronald Challey on January 9,
22 2020 at 9:18 a.m. The file here of the record appears
23 to be underlined. What, if anything, does that signify?

24 A. The most recent data supplement, the missing
25 punches I referenced earlier that the employer filled in

Michael Murray - Direct by Mr. Herrera

1 had an underline kind of identifying them.

2 Q. So, Mr. Murray, is it the case or tell me if a
3 punch value, column P or column Q is underlined, what
4 does it signify?

5 A. My understanding it was manually entered by the
6 employer that was previously missing from the files.

7 Q. For purposes of your summary, Mr. Murray, did you
8 take these underline punches at face value?

9 A. I did.

10 Q. I'm going to scroll further down in this sheet,
11 Mr. Murray. I'm now in row 88 for an employee named
12 Dana Wittnan, W-i-t-t-n-a-n.

13 A. It's actually on row 87.

14 Q. 87. Thank you for correcting me.

15 On row 87 within 2020A the Excel file, we see
16 here a punch in at 7:30 a.m. on April 30, 2020 and a
17 punch out at eight p.m. Is that accurate?

18 A. That's correct.

19 Q. Can you tell me anything about what is included in
20 row 87, column R?

21 A. So there's different codes. BD is very common. My
22 understanding it stands for break deduction and then the
23 30 is referring to a number of minutes. So there will
24 be a code and a number in this field.

25 Q. What is the significance of this BD30, what does it

Michael Murray - Direct by Mr. Herrera

1 mean?

2 A. It means for the purpose of the payroll, the
3 employer deducted 30 minutes from the shift for that
4 day.

5 Q. So it appeared based on the punches, Mr. Murray,
6 this person worked for 12 and a half hours, is that
7 right?

8 A. They punched in -- between the punch in and punch
9 out is 12 and a half hours.

10 Q. What impact does the BD30 have on the amount of
11 hours credited for this employee for this day?

12 A. It would reduce it by 30 minutes, 12 hours instead
13 of 12 and a half.

14 Q. I'm going to scroll further down the sheet. We'll
15 see here, Mr. Murray, now we are in rows 293 to 311 or
16 so in 2020A.

17 What significance, if any, is there for the
18 BD30 to appear on each of the records we are seeing now
19 on the screen?

20 A. So for each one of these shifts or dates, there are
21 30 minutes subtracted for break deduction.

22 Q. Have you ever heard of something referred to
23 sometimes as automatic deduction?

24 A. Yes.

25 Q. Do you have any understanding of what it may mean

Michael Murray - Direct by Mr. Herrera

1 for this case?

2 A. It means the BD30 was an automatic deduction.

3 Q. What do you understand automatic to mean?

4 A. The computer program will do it rather than the
5 employee indicating when they took a break.

6 Q. From what you saw in this time data, Mr. Murray,
7 did the payroll system of pay data indicates that 30
8 minutes was automatically being deducted regardless of
9 the punches?

10 A. Can you rephrase the question, please.

11 Q. Yes. From what you saw of the time data and these
12 BD30 values, did you see within this time data the
13 phenomenon or the occurrence of an automatic deduction
14 of 30 minutes of work time irrespective of what the
15 punches showed?

16 A. Yes.

17 Q. I'm going to scroll down and see if I can find an
18 example. Here is one. This is row 349 of 2020A.
19 Mr. Murray, here in column R we see BD15. Do you know
20 what that means?

21 A. In this case, the 15 minutes was deducted instead
22 of 30.

23 Q. Let me scroll a little further down to see if I can
24 find an example. Here is one.

25 We're now in row 557 in column R. I see here

Michael Murray - Direct by Mr. Herrera

1 MPBD30. Do you know what that means?

2 A. MP to my understanding is missed punch. BD30 is a
3 break deduction of 30 minutes.

4 Q. All right, Mr. Murray. We're going to put this
5 sheet aside for the moment.

6 Do you know, Mr. Murray, do you have any
7 awareness of the employment policies for these
8 buildings, the rules that govern the employees work?

9 A. Not in detail.

10 Q. Do you have any awareness of rules that they may or
11 may not have had with respect to punching?

12 A. I heard they were to punch or the attorney informed
13 me they were supposed to punch out for breaks.

14 Q. What do you mean by that?

15 A. So if you went to go to lunch, you would punch out
16 on your way out to get lunch and punch back in when you
17 came back to give you an example.

18 Q. Mr. Murray, did you see instances in the time data
19 where an employee did punch out for lunch?

20 A. Yes.

21 Q. Did you see instances where an employee did not
22 punch out for lunch?

23 A. Yes.

24 Q. Can you give us a general sense at all about how
25 much is in each category about how many employees

Michael Murray - Direct by Mr. Herrera

1 punched for lunch and about how many employees did not?

2 A. So about most of the employees did not. I can't
3 recall the exact numbers.

4 Q. If I showed you a document, Mr. Murray, would it
5 assist you in recollecting that information?

6 A. Yes, it could.

7 MR. HERRERA: Your Honor, how do you want me
8 to handle this? I have some documents for opposing
9 counsel and the Court and I can ask him to read it
10 silently and ask it again.

11 THE COURT: Are you refreshing his
12 recollection?

13 MR. HERRERA: Yes. Would you like a copy?

14 THE COURT: Look, there is present
15 recollection refreshed and past recollection recorded.

16 Past recollection recorded, you're going to
17 ultimately substantively use it. If you can't refresh
18 his recollection first, then I will need a copy of it.
19 If this is just refreshing his recollection currently,
20 you can show him and exchange documents if need be.

21 I think it's important you show opposing
22 counsel what you are showing him.

23 MR. SCHWARTZ: Before that, I might have
24 missed it. I didn't hear what we are refreshing.

25 MR. HERRERA: I asked Mr. Murray if he could

Michael Murray - Direct by Mr. Herrera

1 tell us how many employees are in each category, those
2 that punched for lunch and those that did not and he
3 said he could not recall.

4 MR. SCHWARTZ: And there is a document that
5 will refresh. Okay.

6 Q. Mr. Murray, I'm going to hand you a one-page
7 document. Read it silently to yourself.

8 A. Okay.

9 (Pause in the proceedings.)

10 Q. I'm going to take the document back from you now.

11 Can you recall, Mr. Murray, approximately how
12 many employees were in each category, specifically those
13 that punched for lunch and those that did not?

14 MR. SCHWARTZ: I'm sorry, Your Honor. I don't
15 think the predicate was laid whether this document
16 refreshed his recollection and then I have concerns
17 about the document.

18 THE COURT: Okay. Let's address the concerns
19 about the document first and then we'll go into whether
20 the predicate has been laid. That's as simple as asking
21 him did that refresh his recollection.

22 Go ahead.

23 MR. SCHWARTZ: So this document contains
24 conclusory information. If he isn't the preparer of
25 this document, then he is being -- his recollection is

Michael Murray - Direct by Mr. Herrera

1 being refreshed by data summaries that weren't his and
2 that is --

3 THE COURT: That's right. He doesn't have to
4 be the preparer in order to refresh his recollection.
5 Maybe that is a foundational issue.

6 You can ask him if -- one can have one's
7 recollection refreshed, true recollection as opposed to
8 learning something new. Did you know this at one point.
9 Did you forget. Did this document help you remember
10 what you once knew, et cetera.

11 MR. SCHWARTZ: Unless this document is the
12 source of his information, not that it's something he
13 had seen somewhere else. If this is a lawyer-prepared
14 document --

15 THE COURT: If he looked at that before and
16 that was not your understanding, then that goes to your
17 impeachment of the testimony. It doesn't go to his
18 recollection of it.

19 MR. SCHWARTZ: Okay.

20 THE COURT: Why don't you lay that foundation.

21 BY MR. HERRERA:

22 Q. Mr. Murray, the document I showed you, do you know
23 who wrote the words on the page?

24 A. I did.

25 Q. Having now seen this document, sir, can you

Michael Murray - Direct by Mr. Herrera

1 recollect the answer to my question?

2 A. Yes. About 4,800 employees never recorded a punch
3 time for a break, about 3,100 employees punched at least
4 once during their employment history for a break.

5 Q. I want to ask you, sir, about the files within
6 JX58. Just to make the record clear, sir, on the screen
7 here there are 14 items or Excel files within JX58 time
8 data. Do you see that some of these Excel files have an
9 A and a B within their file name?

10 A. Yes.

11 Q. Do you know what that means?

12 A. So there's an A and B for each of the years from
13 2017 to 2022. A is for January to June of that year and
14 B is July through December of that year.

15 Q. Thank you, Mr. Murray. I would like now to spend
16 some time walking through some pay data. Let's go to
17 within JX58, the second folder pay data.

18 While that opens, I'm going to open a
19 different Excel file and tell me if you recognize it,
20 please.

21 MR. HERRERA: For the record, Your Honor, this
22 is an Excel file labeled frinds, f-r-i-n-d-s, PR totals,
23 t-o-t-a-l-s.

24 THE COURT: Is this part of or one of -- let
25 me orient myself. Is this part of or one of the

Michael Murray - Direct by Mr. Herrera

1 exhibits?

2 MR. HERRERA: This is part of JX58. I can
3 bring it up now.

4 THE COURT: That's fine. As long as you
5 specify when you are opening something and what it
6 relates to, what joint exhibit it's part of. That helps
7 the record be clear what we are talking about.

8 So it's friends PR totals, is that what it is?

9 MR. HERRERA: Yes, Your Honor. Let me open a
10 different one. I want to be precise on what I'm
11 actually showing the Court. I am opening a different
12 Excel and I will make the record clear about where it
13 comes from.

14 Q. Now that my computer is functioning again, I'm
15 going to go to JX58 and open the pay data folder.

16 Specifically the document I'm going to open in
17 a moment, Mr. Murray, is labeled friends, D-O-L,
18 parenthesis, no SSN, close parenthesis.

19 I will attempt to show the Court where within
20 JX58 this specific file is. Now opening JX58, JX58 pay
21 data. While I wait for that to happen, Mr. Murray, can
22 you tell me do you recognize the Excel file that is
23 labeled friends DOL, no SSN?

24 A. This is actually a CSV file but by default, Windows
25 machine will use Excel to open CSV.

Michael Murray - Direct by Mr. Herrera

1 Q. I am now going to try to open a file within JX58,
2 pay data with the same name as the Excel file on the
3 screen, sir. Did it just open the same file I clicked?

4 A. Yes.

5 Q. Okay. Mr. Murray, tell me what is this document?

6 A. It's a CSV file containing pay data records for
7 CHMS.

8 Q. Is this one of the files that you received in your
9 work in this case?

10 A. The original file had a Social Security number but
11 that has been removed for privacy purposes.

12 Q. All right, Mr. Murray. Let's spend some time with
13 this document. Can you tell me what column A is,
14 E-I-P-I-D?

15 A. It's the identification number each employee
16 received from the facility they worked at. If they
17 worked at different facilities, they would have a
18 different ID number.

19 Q. Were the facility IDs, the employee IDs, were the
20 same between the pay data and time data in this case?

21 A. Yes.

22 Q. Were you able to accurately match employee time
23 data to the same exact employee within the pay data?

24 A. Because some of the employees worked at different
25 facilities, so I wasn't able to uniquely identify just

Michael Murray - Direct by Mr. Herrera

1 to one employee name on all the records. For most cases
2 it would work but not for all of them.

3 Q. Did you do anything to account for those instances
4 where an employee would not have the same ID across all
5 the data?

6 A. So what I did in the end was to create a new field
7 in my database that had a unique employee name. My
8 understanding is these names were validated by the
9 attorneys and the employer.

10 So I would kind of have two steps. I would
11 relate the ID to the name and then use the name to join
12 the pay data to the time data.

13 Q. Mr. Murray, I want to talk to you about employee.
14 What does that mean, column B?

15 A. It's the name of the employee who was paid.

16 Q. How about column C, pay period?

17 A. This was the pay period date stored as not a date.
18 It's stored as a string of numbers with the four digit
19 year first followed by two digit month and then two
20 digit day.

21 Q. Let's go to column E, capital R-E-G, do you know
22 what that is?

23 A. Stands for regular.

24 Q. What is regular for purposes of this spreadsheet?

25 A. This is the column of the hours of regular time

Michael Murray - Direct by Mr. Herrera

1 they were paid for.

2 Q. Just explain for me, if you can, how, if at all,
3 you can compare the hours in the time data and the hours
4 in the pay data?

5 A. The time data would have to be summed or aggregated
6 for the pay period. So you had to identify which pay
7 period each time data record belongs to and depending on
8 the facility and then we can compare kind of apples to
9 apples instead of apples to oranges.

10 Q. Mr. Murray, at any point in your involvement in
11 this case did you see an instance where the hours in the
12 time data did not match the hours in the pay data?

13 A. Yes.

14 Q. How often did you see that?

15 A. Most of the records.

16 Q. Let's go to column F, _ pay. Do you know what
17 column F is?

18 A. It's a per dollar so it's regular pay. It's the
19 amount of money that was paid to the employee for their
20 regular hours.

21 Q. Is there any connection between column E and column
22 F?

23 A. Yes. So regular pay reflects total dollar amounts
24 for the total regular hours work.

25 Q. Mr. Murray, if I were to divide the values in

Michael Murray - Direct by Mr. Herrera

1 column F by column E, would it give me that employee's
2 pay rate?

3 A. Yes. It would be their regular pay rate.

4 Q. What is column G, Mr. Murray?

5 A. That was the number of overtime hours. OT stands
6 for overtime.

7 Q. How about column H?

8 A. That would be overtime pay.

9 Q. Is there the same relationship between columns H
10 and G --

11 A. Yes.

12 Q. -- as F to E. Forgive me.

13 A. If you divide the OT pay by the OT hours, it would
14 provide you the overtime rate that was used.

15 Q. What is column I, Mr. Murray?

16 A. That is holiday. So when an employee took an
17 holiday off, it was reported the number of hours and
18 what they were paid.

19 Q. Holiday for column I, is that pay for work
20 performed, Mr. Murray?

21 A. No. It would be for time off.

22 Q. What role, if any, did column I play in your
23 summary of the employer's payroll data in this case?

24 A. It didn't play a role.

25 Q. Why not?

Michael Murray - Direct by Mr. Herrera

1 A. I was instructed only to look at fields that were
2 related to work performed.

3 Q. I want to walk through and not belabor the point a
4 few more of these, Mr. Murray. How about column N,
5 sick, what is that?

6 A. That would be for payment for sick days that the
7 employees took off.

8 Q. I should have asked you this before, Mr. Murray.
9 How do you know what any of these columns mean?

10 A. So toward the beginning of the case, 2018 or early
11 2019, one of the first things I do is make a list of the
12 columns and all the tables.

13 I provided those to the attorney asking if
14 there was any more description for them. My
15 understanding is the attorney provided the list to the
16 employer and received back some basic descriptions. I
17 recall not all the fields but most of them.

18 Q. Are you saying your understanding of what all these
19 columns mean, did it come from the employers in this
20 case?

21 A. Yes.

22 Q. Did you independently do an analysis to determine
23 what these columns mean?

24 A. No.

25 Q. Let's go now to column Q, Mr. Murray, d-i-f-f-e-r.

Michael Murray - Direct by Mr. Herrera

1 What is column Q?

2 A. That would be differ which stands for differential.
3 So Q is just the number of hours for which differential
4 pay rate was added to their regular pay rate.

5 Q. What is a differential pay rate?

6 A. My understanding is employees would receive a
7 differential rate as kind of an incentive to work
8 something like an overnight shift or unpopular shift.

9 Q. Are you referring to something that is called a
10 shift differential?

11 A. Yes.

12 Q. How about column R, what is that?

13 A. So column R is the total dollar amount that was
14 received for the differential pay for the hours
15 recorded.

16 Q. If I were to divide column R by column Q, would it
17 give me the differential rate?

18 A. Yes, it would.

19 Q. What role, if any, did columns Q and R play in the
20 summary of your back wages in this matter?

21 A. So I was instructed to use the differential columns
22 to calculate the computed rate for purposes of
23 determining the premium overtime rate.

24 Q. Why? Why this column and not say column N?

25 A. I was provided a list of the columns. So like M

Michael Murray - Direct by Mr. Herrera

1 and N are for time that wasn't worked. It was not
2 working time. The differentials is for time that was
3 worked.

4 Q. Let's go through just a few more of these,
5 Mr. Murray. What is column U?

6 A. It stands for evening differential.

7 Q. Is that another category of pay for work performed?

8 A. Yes.

9 Q. Is that part of your summary in terms of money paid
10 for work performed?

11 A. Yes.

12 Q. Let's go to a different one here. We'll try column
13 AA, H-Z-R-D? Do you know what that is, Mr. Murray?

14 A. As I recall, it stands for hazard. I'm not sure
15 what the "RD" stands for.

16 Q. Is this to your understanding reflecting data for
17 work performed?

18 A. Yes.

19 Q. Is that based on the information you received from
20 the defendants in this case?

21 A. Through the attorney, yes.

22 Q. Mr. Murray, are you able to say that you understand
23 which columns in Friendship, friends DOL: Parenthesis,
24 no SSN, close parenthesis, are you able to rely and
25 distinguish between columns reflecting pay for hours

Michael Murray - Direct by Mr. Herrera

1 worked and columns reflecting pay for unrelated hours
2 worked?

3 A. I did record which hours were to be considered as
4 pay work. So if there was any question I can't
5 recognize because there's about a hundred of these, then
6 I refer back to my methodology to determine whether or
7 not it is to be included as time worked.

8 Q. Your understanding of which columns to identify as
9 work performed or columns unrelated to work, it's
10 written in your methodology for this matter?

11 A. Yes.

12 Q. One more column, Mr. Murray. Can you tell me if
13 you know what column AO means, PU?

14 A. PU stands for pick up. My understanding this would
15 be kind of an unscheduled shift. They would ask an
16 employee to come in for a shift that wasn't scheduled
17 and they would get a bonus for doing so.

18 Q. What is column AP?

19 A. This is a bonus, dollars that were paid for working
20 the shift or could be multiple shifts.

21 Q. So, Mr. Murray, explain for me, do I have this
22 right, if we take row 7 of this file in columns AO and
23 AP, is this saying this employee worked 13 hours of a
24 pick-up shift and was paid \$1,300 for that work?

25 A. I don't believe that's an hours column. It may

Michael Murray - Direct by Mr. Herrera

1 have been used for something else. I'm not sure how the
2 company used it. I was told not to include it in the
3 hours.

4 Q. But the pay, Mr. Murray --

5 A. The pay, that was to be included in computing the
6 overtime premium rate.

7 MR. HERRERA: Unless Your Honor has any
8 questions, I can move on from this sheet.

9 THE COURT: I don't have any questions. In
10 fact, let's take our midmorning break right now as you
11 move on to another sheet. We'll take ten and convene
12 back here in ten minutes.

13 (Whereupon, a break was taken.)

14 THE COURT: Okay. Let's get to it.

15 Q. Mr. Murray, the spreadsheet we just went through,
16 can you tell me is the data, all pay data for all 15
17 facilities in the same format?

18 A. No.

19 Q. How is it different?

20 A. So different facilities used different column
21 names, had different fields.

22 Q. So other than the inclusion of additional fields,
23 is it in the same structure, the pay data sheets you
24 received for those other facilities?

25 A. Yes, other than that they were similar.

Michael Murray - Direct by Mr. Herrera

1 Q. What are some of the differences for pay categories
2 across the buildings?

3 A. Mostly in the differentials and the bonuses they
4 would have different kinds, I guess, depends on the
5 facilities or maybe used different names for the same
6 thing.

7 Q. Did the buildings have different schedules for
8 processing payroll?

9 A. Yes. So there were three different pay dates, pay
10 date schedules. So that's just in the methodology.

11 Q. The time data we reviewed, Mr. Murray, the 2020A
12 sheet, is the date for all 15 facilities in the same
13 format?

14 A. Well, the sheet we just looked at was for Brighton,
15 so other facilities might have additional fields or
16 different fields.

17 Q. Mr. Murray, I'm referring -- I'll bring it back up,
18 2020A, the time data.

19 A. Time data, sorry. I'm still thinking pay data.

20 Q. Is the time data for the 15 facilities in the same
21 format as to what is now on the screen in 2020A?

22 A. Yes.

23 Q. We were talking earlier today about gaps,
24 Mr. Murray. Within these spreadsheets for pay time for
25 15 buildings, was there enough information in them to

Michael Murray - Direct by Mr. Herrera

1 summarize how much time the employees worked?

2 A. Yes.

3 Q. Within those same data, Mr. Murray, was there
4 enough information to summarize how much those employees
5 were paid?

6 A. Yes.

7 Q. What, if anything, did you do after importing the
8 data within JX52 through JX58 into the program you used?

9 A. The next step would be to the additional fields I
10 think I mentioned were added to reformat data or provide
11 dates into the time data for the pay date so we could
12 match up the two sets of data. I would insert those
13 fields.

14 Q. What do you mean insert those fields?

15 A. Or update them because they already exist in the
16 tables. For instance, the time data doesn't have a pay
17 period. So I inserted a date that would tie back to the
18 pay date and the pay data.

19 Q. Let's speak to that for a minute, Mr. Murray. So
20 what do you mean the time data didn't have a pay period?

21 A. So the time data would just show when an employee
22 worked. It didn't show what pay period they were going
23 to be paid for that work.

24 Q. Was there a gap between the time the employee
25 worked and when they were paid?

Michael Murray - Direct by Mr. Herrera

1 A. Yes. Typically, it would be a few days at the end
2 of the pay period or up to a week and a half after the
3 pay period ended.

4 Q. Did it just vary from the facility?

5 A. Yes. I was able to group them into three
6 different. One is the second Tuesday after the pay
7 period ends, one is the second Wednesday after the pay
8 period ends and the third is the first Thursday after
9 the pay period ends but on that one, I would check the
10 methodology on that to be sure.

11 Q. Where did you get that information for the
12 scheduling for the payments from the pay period and the
13 time data?

14 A. I had to ask the attorney to verify what the pay
15 schedule dates were, when the workweek was and the
16 workweek goes from Saturday to Sunday -- I'm sorry --
17 Sunday to Saturday and then when the pay dates would
18 come after the pay period ended.

19 Q. Do you know if the defendants were consulted to
20 ensure that the correct time periods for each facility
21 were used?

22 A. My understanding is they verified it.

23 Q. In the import through Microsoft Access I believe of
24 the Excel files within JX52 through JX58, in that import
25 process, did you modify any of the substantive values

Michael Murray - Direct by Mr. Herrera

1 within any of those sheets?

2 A. No.

3 Q. To your understanding, Mr. Murray, the data within
4 JX52 through JX58, does it reflect how defendants
5 calculated the wages they paid to the employees
6 identified in those files?

7 A. As far as I know, yes.

8 Q. Can you summarize for me how did you actually use
9 Microsoft Access to aggregate these Excel sheets?

10 A. So the standard query language has certain
11 operators or functions -- I'm sorry, they're called
12 functions. So you can provide the function for sum.
13 You provide the column name and it would sum up all the
14 numbers in that column and give you a total.

15 It can also apply some grouping to that data.
16 So if you just picked a column, it would give you one
17 sum for the entire data set, the whole table.

18 If you say sum by employee name, it will give
19 you the sum of that number for each employee. Each time
20 that employee value changes will have a new sum. That's
21 how that works.

22 Q. At any point, Mr. Murray, did you create a written
23 document to describe how you summarized the defendants'
24 pay and time data?

25 A. Yes.

Michael Murray - Direct by Mr. Herrera

1 MR. HERRERA: Your Honor, I'm going to hand
2 the Court a copy of what is marked PX5.

3 THE COURT: Okay.

4 Q. I'm going to display a document for you on the
5 screen, Mr. Murray. This document is 12 pages marked
6 PX5. Do you see that, Mr. Murray?

7 A. Yes.

8 Q. Do you know what this document is?

9 A. This is the methodology I wrote.

10 Q. Why did you write it?

11 A. To record the steps I took to create the back wages
12 and also to explain to any other interested parties the
13 steps that I took.

14 MR. HERRERA: Your Honor, based on defendants'
15 comments earlier about hearsay, we request that PX5 be
16 admitted into the record.

17 THE COURT: Any objection?

18 MR. SCHWARTZ: No, sir.

19 THE COURT: Admitted.

20 Q. Mr. Murray, does this document contain the specific
21 means by which you summarized the defendants' pay and
22 time data to determine if any back wages are due?

23 A. Yes.

24 Q. Mr. Murray, is this document a fair and accurate
25 explanation of that process?

Michael Murray - Direct by Mr. Herrera

1 A. Yes, it is.

2 Q. Mr. Murray, is the methodology contained within
3 this document, is any of it based on a legal opinion you
4 have reached?

5 A. No.

6 Q. Other than defendants' explanations of the data
7 that we've talked about, what certain columns meant for
8 pay, are there any other areas where you needed guidance
9 to complete the process depicted in PX5?

10 A. Yes. I needed from the attorneys an explanation of
11 how to compute back wages, what overtime was owed for
12 each pay period. They provided me some rules.

13 Q. What rules?

14 A. For instance, how to calculate the regular rate
15 that would then be used to calculate the premium owed
16 for overtime.

17 They also told me to compute or instructed me
18 to compute a credit for each pay period and then to
19 balance that against the overtime -- an overtime credit
20 and balance that against the overtime owed for that pay
21 period.

22 Q. What do you mean credit?

23 A. The pay data shows that the employees were paid
24 overtime, additional money for overtime, and so I was
25 instructed to compute how much of that -- how much they

Michael Murray - Direct by Mr. Herrera

1 were paid for overtime already and to credit that
2 against what we were calculating as owed overtime from
3 the time data.

4 Q. Let's go through some of the documents, sir.
5 There's a section of the document on Page 1 that says
6 data imports. Does that summarize what you were
7 describing earlier in terms of how you enter the data
8 within JX52 through JX58 into the Microsoft Access
9 program you described?

10 A. Yes.

11 Q. I want to focus you now on this next section
12 further down on Page 1, additional fields. Can you just
13 explain in simple terms what is an additional field for
14 purposes of this document?

15 A. These fields doesn't exist in the source data. I
16 created them in the Microsoft Access database to
17 facilitate joining the pay data and time data together.

18 Q. Why was that necessary?

19 A. Well, if you have hours and the time data, you want
20 to know how much was paid for those particular hours
21 specifically, you would need to know which record and
22 pay data matches which records in the time data.

23 The first field name added applied 8/80. That
24 is kind of a special case. Some employees had different
25 rules for earning overtime. That's an example of a

Michael Murray - Direct by Mr. Herrera

1 field that was added to identify records that were
2 applied where that rule would apply.

3 Q. Let's spend a moment talking about that for a
4 moment.

5 Your Honor, I prepared a demonstrative
6 PowerPoint to assist us today in understanding
7 Mr. Murray's testimony. I provided it to opposing
8 counsel. I'm not seeking entry into evidence in, but I
9 would like to hand the Court a copy for its reference.

10 THE COURT: Okay. The PowerPoint is not going
11 to be proffered as an exhibit, you are just using it to
12 guide us through your evidence?

13 MR. HERRERA: Precisely. I'm going to hand a
14 copy to Mr. Murray as well, if you don't mind.

15 THE COURT: Sure.

16 Q. Mr. Murray, could you please turn to slide 2. I
17 want to spend some time talking to you about this.

18 There's an 8/80 rule referred to in PX5 on
19 page 1. What is your understanding of what that rule
20 is, if any?

21 A. So certain facilities for certain departments, it
22 was explained to me employees instead of earning
23 overtime premium for hours worked over 40 in one week,
24 they would sum up the total number of hours that they
25 worked past eight hours each day and also sum up the

Michael Murray - Direct by Mr. Herrera

1 total number of hours over 80 in the pay period, compare
2 those two numbers and the larger number would be used
3 for computing overtime.

4 Q. Let's spend a little time talking about this,
5 Mr. Murray. Are you saying that in some buildings the
6 rule was hours over 40 would be overtime hours?

7 A. Correct.

8 Q. Are you saying there were different rules at
9 certain buildings for what an overtime hour is?

10 A. Correct.

11 Q. What are those rules, those different rules?

12 A. They were called the 8/80 rule. I only know of the
13 one.

14 Q. So how would an overtime hour be determined in a
15 building with an 8/80 rule?

16 A. You would have to account for each day how many
17 hours over eight the employee worked and then the total
18 number of hours over 80 for the pay period and then
19 compare the two and then select the larger number for
20 purposes of determining overtime owed or earned.

21 Q. You reference here in the applied 8/80 row of PX5,
22 appendix A. I want to direct your attention to it now,
23 sir. Is it within this document?

24 A. Yes.

25 Q. I am going to scroll down. Is this the appendix A

Michael Murray - Direct by Mr. Herrera

1 referred to above?

2 A. Yes, it is.

3 Q. Can you tell me what this appendix is, please?

4 A. This is describing the rules that were used to
5 determine whether a time record would be subjected to
6 the 8/80 rule.

7 Q. Where did this information come from, Mr. Murray?

8 A. The attorney provided it to me.

9 Q. Do you know if any of the information that was
10 provided to you came from the defendants?

11 A. That's my understanding.

12 Q. These dept row, does that match the dept row we saw
13 earlier in the time data?

14 A. Yes. That's that code.

15 Q. Just tell me in general terms, Mr. Murray, I'm
16 looking at Brighton where an employee is in central
17 supply. What is this appendix telling me about, if
18 anything?

19 A. You would have to look at the paragraph above for
20 Brighton. They only applied these rules through April
21 1, 2017. So if a time data record occurred before that
22 date and the person or the employee worked in central
23 supply at Brighton, then they would be subjected to the
24 8/80 rule for purposes of determining overtime.

25 Q. For the facilities and departments that are not

Michael Murray - Direct by Mr. Herrera

1 listed within appendix A, what is the rule for
2 determining whether an overtime hour is worked?

3 A. That would be hours over 40 hours worked in one
4 week.

5 Q. Let's go back up to page 1, Mr. Murray. I want to
6 ask you now about a few of these other additional
7 fields.

8 Let's talk about pay period date. Can you
9 tell us what that means, please.

10 A. If you recall, the time data, the date was in a
11 text format, two digit year, two digit month and two
12 digit day. Microsoft Access wouldn't recognize that as
13 a date, so I created this field to convert that date
14 into a date format that Microsoft Access recognizes.

15 Q. Did that conversion at all modify the substantive
16 value in the date field?

17 A. No. It leaves it the same.

18 Q. Does the reference in this row pay period added
19 underscore pay period date to appendix E, what is that?

20 A. So each facility would have a different pay period
21 date. One being the first Thursday after the end of the
22 pay period when the employees were paid for their work.

23 Q. Is appendix E contained within this document,
24 Mr. Murray?

25 A. Yes, it is.

Michael Murray - Direct by Mr. Herrera

1 Q. Let me scroll down. Can you tell us what we're
2 looking at on page 10 of 12 of PX5?

3 A. These are the rules. There's three of them.
4 Depends on the facility. It would be the facilities
5 would fall under one of these three rules when they pay
6 people.

7 Q. Where did this data come from, Mr. Murray?

8 A. It was provided to me by the attorney from the
9 employer.

10 Q. Directly or through --

11 A. Well, not directly. The attorney provided it to
12 me. My understanding is it was the employer confirmed
13 this information.

14 Q. Let's go back to page 1 and go through just a few
15 more of these.

16 You mentioned earlier, Mr. Murray, the
17 occurrence of an employee working in more than one
18 facility and having a distinct employee ID. I want to
19 ask you about the row here added underscore employee
20 name unique. Can you tell me what this row is referring
21 to?

22 A. Here we tried -- I tried -- if an employee had more
23 than one employee ID and sometimes their name would be a
24 little bit different, too. They might have a middle
25 initial and might not. So I created this field so there

Michael Murray - Direct by Mr. Herrera

1 would just be one unique uniform name for that person.

2 Might have multiple employee IDs or multiple other

3 spellings of their name.

4 Q. Why was it necessary to do that?

5 A. Well, the end goal would be to have some back wages

6 for each employee. So the goal was to have just one

7 number for one employee, unique employee.

8 Q. Was it necessary to create this additional field in

9 order to accomplish that goal?

10 A. Yes.

11 Q. Why was it necessary?

12 A. Most important for when an employee worked at

13 different facilities so we want to be able to sum up the

14 hours accurately for the week where they may have worked

15 at two different places.

16 The employee ID would be two different

17 numbers. The way Microsoft Access works, it won't give

18 you one number. It will give you two rows and sum the

19 number for each employee ID.

20 So I had to remove the employee ID from the

21 query and just have that unique name and at that point,

22 we would have one sum of hours for the week, let's say,

23 for that employee.

24 Q. There's a row up here at the top of Page 2 of PX5,

25 added underscore duplicates. What does this row

Michael Murray - Direct by Mr. Herrera

1 address?

2 A. There were a few records which were duplicates in
3 every single field in two rows was the exact same value
4 including date in time, out time.

5 So in order to avoid double counting that
6 record, this is a yes-no field. There is a query you
7 can use to identify duplicate records and then use that
8 to mark one of them as a duplicate and filter it out as
9 back wages so it wouldn't be counted twice.

10 Q. What would happen to back wages if you did not fill
11 out these duplicate, Mr. Murray?

12 A. It would increase the amount of time computed for
13 the week and that would increase the back wages.

14 Q. So, Mr. Murray, by removing the duplicates, did it
15 necessarily lower the amount of back wages due in this
16 case?

17 A. Yes, it would lower the number.

18 Q. Why did you remove the duplicates, sir?

19 A. Standard practice but also the attorneys agreed
20 they should be removed.

21 Q. Last one for now, Mr. Murray. This row added
22 underscore multiple underscore capital W-E underscore
23 groups. What does this row mean?

24 A. We noticed people worked at different facilities
25 and I discovered a problem with the different facilities

Michael Murray - Direct by Mr. Herrera

1 would have a different pay cycle. So just pick a date
2 and say one facility A, their pay period went from
3 January 1 to January 15 for two weeks. Facility B would
4 be January 8 to the 22. That would complicate it then
5 to determine how to relate the pay from the time data to
6 these two different records in the pay data for those
7 employees who were working at different facilities.

8 I created this field to identify those records
9 that were harder to compute and treated them separately.

10 So basically there's two sets of back wage
11 computations. One for most of the records where people
12 just worked at one facility or if they worked at two
13 facilities but they happened to have the same pay cycle,
14 it wouldn't matter. These oddballs had to be treated
15 differently were a separate set of queries.

16 Q. Do you know how many people were in this separate
17 set, employees who worked in more than one facility with
18 distinct pay schedules?

19 A. I don't know the number of employees. There was
20 about 17,000 time data records that were involved as pay
21 data. It's a small number, less than one percent of the
22 total number of records.

23 Q. I'm going to go down now to the bottom of Page 2,
24 Mr. Murray. This section says hour and wage computation
25 queries. Can you tell us what that means, please?

Michael Murray - Direct by Mr. Herrera

1 A. So I created a set of queries kind of go step by
2 step setting hours by days, hours by week, pay period,
3 applying different rules like the 8/80 rule.

4 I numbered the queries one through nine, each
5 having a unique name and this section describes what the
6 purpose of each query is.

7 Q. If you could, Mr. Murray -- before we dive into
8 this, could you look at page one of the PowerPoint,
9 please?

10 A. Yes.

11 Q. Do you see there on this slide there are three
12 lines first addressing queries one through seven, query
13 eight, query nine.

14 Does this in essence summarize what the
15 purpose of these queries are in this document are?

16 A. Yes, at the highest level.

17 Q. So just at the highest level, what do queries one
18 through seven in PX5 do?

19 A. They look at the time data primarily to determine
20 how many hours employees worked.

21 Q. Within that process is there an identification of
22 which of those hours are overtime hours?

23 A. Yes.

24 Q. As part of that process, do you draw the
25 distinction that you mentioned earlier between

Michael Murray - Direct by Mr. Herrera

1 facilities that have a 40 hour OT rule and the
2 facilities that had the 8 and 80 OT rule?

3 A. Yes, that's addressed.

4 Q. Can you tell me what is happening in query eight,
5 please?

6 A. Query eight primarily looks at the pay data to
7 determine the pay rates that the employees were paid.

8 Q. Why not just use the employee's stated pay rate in
9 the data the defendants produced?

10 A. Well, the rule is for adding up the various
11 differential fields to determine the premium portion of
12 the overtime rate. So query eight takes care of all
13 that logic.

14 Q. Did you see in the pay data for these 15 buildings,
15 Mr. Murray, instances where the defendants did not
16 appear to include all compensation for work performed in
17 the employees' regular rate?

18 A. You mean including the differential fields?

19 Q. Yes.

20 A. Yes.

21 Q. How often did that happen?

22 A. I can't recall how frequent it was. It was most of
23 the records where there was time differentials not
24 employees always paid a differential or a bonus.

25 Q. So for those employees that received different

Michael Murray - Direct by Mr. Herrera

1 categories of pay, was that additional pay consistently
2 included in the employees regular rate?

3 A. No.

4 Q. What is query nine, Mr. Murray?

5 A. Query nine kind of ties it all together, uses the
6 hours from the first seven queries and then the pay rate
7 information on query eight to determine back wages.

8 Q. Mr. Murray, let's spend some time walking through
9 these queries. I'm going to scroll down to page 3 of 12
10 in PX5. In as basic terms as you can, Mr. Murray, what
11 is query one doing?

12 A. Query one simply is for each employee for each day
13 that they worked. It adds up the total amount of time
14 in between the in time and out time stamps. It excludes
15 records where either of those punches are missing. You
16 wouldn't be able to calculate that.

17 Q. So this first query, the output you are saying is
18 just trying to determine hours where you have, as it
19 said here, a complete set?

20 A. Yes.

21 Q. What is happening in query two, Mr. Murray?

22 A. So query two takes the results of query one and
23 averages for each employee essentially how many hours
24 they would work on average per day.

25 Q. Why is it necessary to have an average number of

Michael Murray - Direct by Mr. Herrera

1 hours worked per day per employee?

2 A. This number was going to be used in a later query
3 for days where a time punch is missing, it can't be
4 determined exactly how many hours the employee worked,
5 the average is going to be used to replace that.

6 Q. Mr. Murray, if there are missing punches, why is an
7 average being applied?

8 A. When I noticed these missing punches, I asked the
9 attorney how to address them and this is the solution
10 that was provided to use an average probability for
11 missing time punches.

12 Q. Do you know who made the decision to use an average
13 to account for missing time punches?

14 A. It was the attorney at the time.

15 Q. Did you independently determine that you would use
16 an average to account for missing punches for employees?

17 A. No.

18 Q. Do you know how many employees or how many records
19 to be precise ultimately relied on the average that was
20 produced in query two?

21 A. So, in the current set of data we received about
22 one percent of the records would have an in or out time
23 missing that would be required and we would then use the
24 average to replace the hours for that day.

25 Q. For the other 99 percent of the records, is it just

Michael Murray - Direct by Mr. Herrera

1 relying on the punch times?

2 A. Correct.

3 Q. Can you describe in basic terms for me, Mr. Murray,
4 what is query three?

5 A. So this step takes the -- goes kind of back to the
6 time data. Again, sums the number of hours per day and
7 if it finds that the in or out time is missing, it puts
8 in a blank, no value for total hours for that day.

9 There also is a rule there if a record has
10 absolutely no in or out time or rate deduction value, it
11 will exclude those records.

12 Q. So for records, Mr. Murray, where all facility
13 fields and all the in and out rate deduction fields are
14 missing, do they enter your back wage summary at any
15 point?

16 A. No. At this point they are filtered out.

17 Q. There is no average applied to those missing
18 punches?

19 A. No, there's not.

20 Q. You mentioned that it create a cell where there is
21 no value?

22 A. Null value.

23 Q. A null, N-u-l-l?

24 A. Yes.

25 Q. Why does that happen?

Michael Murray - Direct by Mr. Herrera

1 A. In this case I'm using it for the next query
2 because when the next query sees that null value, it is
3 going to substitute the average number of hours in place
4 of the null.

5 Q. Is this the operation by which query two is used
6 where there is a missing in or a missing out punch?

7 A. Correct.

8 Q. Describe for me in basic term what is query four
9 doing?

10 A. Now with the hours we're missing because of a
11 missing punch, it uses the average and it also computes
12 the number of hours over eight for the day and that's
13 going to be used for 8/80 instances.

14 Q. It says here, the reference to, quote, also uses a
15 sub query to compute a list of employees who punched out
16 for a break at least once. What does that mean?

17 A. I was instructed for employees who at least once
18 punched out for a break, to compute the average amount
19 of time that they were punched out across that group of
20 people.

21 And the other group of employees are employees
22 that never punched out for a break. I was instructed to
23 use the number computed of the first group, which is
24 about five minutes of break time, I would subtract for
25 those people who never punched out.

Michael Murray - Direct by Mr. Herrera

1 Q. Are those the same categories we talked about
2 earlier, I forgot what number you said?

3 A. The 3,100 and 4,800.

4 Q. So for those 4,800 employees who never punched out
5 for a break, what impact, if any, did this sub query
6 have on their working time?

7 A. So this would reduce the total hours per day by
8 five minutes roughly, approximately five minutes.

9 Q. Why is that happening?

10 A. The reason to do it? The attorney instructed me.
11 I'm not entirely clear why but there's logic in the
12 query that says, uses a sub query to identify which
13 employees punched out versus never punched out.

14 There is just logic in there that says
15 employee never punched out, subtract this average number
16 from the total hours for that day.

17 Q. So an attorney within the DOL instructed you to
18 reduce by five minutes the working time of these 4,800
19 employees?

20 A. Yes.

21 Q. What impact, if any, on the back wages did the
22 reduction of these five minutes of these employees have?

23 A. Overall, this would reduce the total back wages for
24 those employees.

25 Q. If you can, Mr. Murray, explain for me in basic

Michael Murray - Direct by Mr. Herrera

1 terms what is happening in query five?

2 A. So at this point the queries are feeding into each
3 other. The result of query four is used in query five,
4 now sum up by week rather than just day. It picks up
5 the number of hours over 40 and this is for those
6 employees who are not 8/80. Overtime will be determined
7 by hours worked over 40 for the week.

8 Q. So what's happening here, Mr. Murray, you have the
9 hours by day in the earlier queries. Now you are
10 collecting hours by week. Why?

11 A. For purpose of determining the overtime for those
12 employees not subject to the 8/80 rule. So we have to
13 keep track of the hours over 40 each week they worked.

14 Q. There is information here about or it says at least
15 sub query to compute unpaid regular hours per week.

16 Mr. Murray, what are unpaid regular hours per
17 week?

18 A. So there's an attorney instructing me that if
19 there's a week where the time data shows an employee as
20 overtime, they worked over 40 hours but they were paid
21 for less than 40 regular hours, say it's 39 hours, throw
22 a number out there, then they would receive pay for that
23 one hour between 39 and 40. So this would be added to
24 back pages as unpaid regular time.

25 This query had to address the fact that the

Michael Murray - Direct by Mr. Herrera

1 pay data is in two-week increments, not one-week
2 increments and there is a total of number of regular
3 hours paid for two weeks. It is not clear usually to
4 determine how many of the regular hours were in the
5 first week of the pay period versus the second week of
6 the pay period.

7 So the solution for that the attorney
8 instructed me to go was to compute a ratio. This is
9 using the time data. So if they worked -- if the time
10 data shows they worked 35 hours in one week and 40 hours
11 in another week, you would have a ratio of a total of
12 75.

13 For the first week of ratio hours work is 35
14 over 75 and the second week would be 40 over 75. That
15 is going to give you a decimal of less than one. That
16 ratio is going to apply to the regular hours in the pay
17 data to kind of divvy them up the regular hours between
18 the two weeks.

19 Q. Why did you do that?

20 A. So the purpose here is if it's a case where it's a
21 week where you're owed or they earned overtime, they
22 worked over 40 hours but this formula is showing they
23 were paid less than 40 hours for that week, they would
24 be entitled to time difference between what they were
25 paid for under 40.

Michael Murray - Direct by Mr. Herrera

1 The attorney referred to it as a gap time. I
2 don't know if that's an official name. That's the name
3 I used.

4 Q. Mr. Murray, if you have an instance where an
5 employee, say, works for 75 hours but then they are paid
6 for 70 and because of the 8/80 rule there is overtime
7 owed, why not just split the pay according to how the
8 time data is organized?

9 A. I mean that's possible but it doesn't take into
10 account how many hours they actually worked each pay
11 period which allows more accuracy in determining how to
12 divide the hours.

13 Q. Just to be clear, Mr. Murray, the hours worked in
14 the pay data, does it specifically attribute which days
15 those hours were worked?

16 A. No, not in the pay data.

17 Q. Let's move on to query six, Mr. Murray. What is
18 happening in query six?

19 A. So, the next step here is to take the weekly hours
20 and now total them up for the two-week pay period. This
21 is the second half of the 8/80 rule. We can compute
22 then how many hours over 80 they worked.

23 Q. What is the difference between the hours per week
24 and the hours per pay period, query six, query five?

25 A. Well, query five is one week of data from the time

Michael Murray - Direct by Mr. Herrera

1 data. Query six would total up two weeks of time from
2 the time data.

3 Q. How about query seven, Mr. Murray, what is
4 happening here?

5 A. So query seven looks at that field I created, the
6 8/80 added field and then it determines the total number
7 of overtime hours that the employee earned considering
8 the 8/80 rule.

9 So it has different columns now. It has
10 columns for hours over 80 total for the two-week period,
11 total hours over 40 for the two-week period, for each of
12 the two weeks and then total hours over 80 and it is
13 just using some logic.

14 If it is the 8/80 rule, it would look hours
15 over eight versus hours over 80, whichever two is the
16 largest number it uses as overtime hours earned.

17 If the employee is not under the 8/80 rule, it
18 is just going to look at the hours over 40 totaled up
19 for the two-week period and uses that for overtime
20 earned hours.

21 Q. Can you describe what's happening in query eight if
22 you are able to?

23 A. Query eight is now looking at the pay data table
24 for each pay period. It's going to compute a regular
25 rate and that's kind of complicated so there is an

Michael Murray - Direct by Mr. Herrera

1 appendix C that describes that policy.

2 Q. We'll go through that appendix in a moment,
3 Mr. Murray. What is the overall goal here for query
4 eight?

5 A. So you see it also computes base regular rate just
6 by dividing pay the regular pay by regular hours. So I
7 was instructed when an employee has an hour of overtime,
8 the pay for that overtime hour is determined by kind of
9 splitting up the -- it should be one hour times one and
10 a half for premium times a rate.

11 We are looking at two rates. The query uses
12 the regular rate, that regular pay divided by regular
13 hours field, uses that for I think they call it the
14 straight time component of the overtime hour, which is
15 the one and the 1.5 and then the premium portion of that
16 overtime pay, the .5, it is going to use the computed
17 regular rate -- I apologize if the terminology is
18 confusing -- the computed regular rate.

19 In addition to regular pay, it's also looking
20 at all the other differentials and bonus fields that are
21 in the pay data. The intensity is a little bit higher.

22 Q. Mr. Murray, the computed regular rate, is that done
23 on a global basis or is it done on an employee basis?

24 A. It's done on an employee pay data basis. It's
25 computed for each pay record and pay period.

Michael Murray - Direct by Mr. Herrera

1 Q. So you're saying each employee and each pay period
2 has a unique computed regular rate?

3 A. Yes.

4 Q. What is that based on?

5 A. So partly it's based on their regular pay rate and
6 partly it's based on adding up all the differentials
7 they received for that pay period plus the money they
8 were paid for regular and overtime and there's a formula
9 for it. I'm leaving some details out. It divides that
10 by the totals number of hours worked in a pay period to
11 create this regulate.

12 Q. Mr. Murray, would an employee's regular rate,
13 computed regular rate, would it fluctuate depending on
14 the hours they worked and the kind of pay they received
15 each week?

16 A. Yes, it would.

17 Q. Does this summary account for those variances in
18 time worked and types of pay received?

19 A. The methodology or the whole back wage?

20 Q. The whole back wage.

21 A. Yes, it does.

22 Q. Let's talk about query nine. Can you describe for
23 me in simple terms, if possible, what is happening in
24 query nine?

25 A. Query nine is taking the results of query seven and

Michael Murray - Direct by Mr. Herrera

1 eight, so we have total overtime hours earned coming out
2 of query seven. Query eight also provides the overtime
3 credit.

4 It is coming out of the pay data anyway
5 because it takes into account the overtime hours that
6 already have been compensated for each employee each pay
7 period.

8 Then it computes overtime pay earned by using
9 the overtime hours query seven times the rate in query
10 eight and subtracts out the overtime credit of what's
11 left over. If there is a positive number left over,
12 then that's the back wages that are left.

13 If it's a negative number meaning the credit
14 was larger than the overtime earned, it zeros it out.
15 So it's zero back wages.

16 Q. So are you saying an employer paid enough overtime
17 to meet your computations as to the hours and rates,
18 there would be no back wages owed for that employee for
19 that pay period?

20 A. Correct.

21 Q. Mr. Murray, I want to try to go through some simple
22 examples. Let's go to the PowerPoint and just talk me
23 through the best of your ability what is happening here.
24 Let's start with slide 3.

25 A. I have it.

Michael Murray - Direct by Mr. Herrera

1 Q. You have an example, here, Mr. Murray, total
2 hypothetical. You have an employee at one of these
3 buildings who works for 100 hours in a pay period. The
4 40-hour rule is applied here. The regular rate is \$10
5 an hour. Just an example.

6 Can you explain for me based on what's on this
7 slide how is their overtime due calculated?

8 A. Okay. So it kind of breaks it up. It's going to
9 have two rates computed. One is the regular rate and
10 the other rate is the computed regular rate, the premium
11 portion.

12 So the premium rate here because there is no
13 differentials and no bonuses paid, it's just the same as
14 the regular base rate. The premium portion is now going
15 to be half of that, so \$5 an hour.

16 Then for the regular straight portion of the
17 overtime, we are using the regular rate. In this case,
18 the rates are both the same. One is cut in half because
19 it's .5 overtime premium.

20 We have 20 overtime hours. The premium
21 portion is paid \$5 an hour. So it's \$100 earned.

22 Then for the regular time portion, straight
23 time portion of that paid \$10 an hour the regular rate
24 for 20 hours and that's \$200.

25 We combine these two for the total amount of

Michael Murray - Direct by Mr. Herrera

1 overtime earned is \$300.

2 Q. Mr. Murray, why not just multiply \$10 times 1.5?

3 A. In this case, that would work but in other cases
4 where there's pay differentials or bonuses that need to
5 be included in the premium part but not the regular
6 part, it wouldn't work.

7 Because the query is going to run across all
8 the records, it's just easier to make it apply this same
9 logic to every record even if the rates are the same.
10 It will work either way.

11 Q. So are you saying, Mr. Murray, there are distinct
12 rules that apply to a person's premium pay and a
13 person's regular pay for an overtime hour?

14 A. Correct.

15 Q. So the \$10 versus the \$5 in that \$15 an hour
16 example?

17 A. Correct. There are different rules.

18 Q. Is that why your summary splits out the calculation
19 of the regular part of overtime and the premium part of
20 overtime?

21 A. Yes, just to show how the information -- where it
22 came from.

23 Q. Let's spend a moment before we go to slide four
24 going to appendix C, then we will go to appendix D.

25 You mentioned the regular rates. I want to

Michael Murray - Direct by Mr. Herrera

1 talk about this briefly, Mr. Murray. What is appendix
2 C.

3 A. This is laying out all the rules or which fields
4 are used to determine the premium portion of what we're
5 calling the computed regular rate.

6 Q. Why is this split up in this document on Page 8 of
7 12 of PX5 to numerator fields and denominator fields?

8 A. The numerator fields are the pay fields, the dollar
9 amounts paid for the pay period total.

10 The denominator fields are the hour fields
11 that were for hours worked as opposed to sick leave,
12 vacation.

13 You take everything that was paid for work
14 divided by the hours worked to get this computed regular
15 rate.

16 Q. Where do these bracketed values, where do they come
17 from?

18 A. So the brackets are from Microsoft Access.
19 Essentially if you have a space and a column name, then
20 Access will recognize it as a column. You have to put
21 the brackets around it. I just copied them from
22 Microsoft Access. Column names are there and pasted in
23 the table.

24 Q. What is the original source of these values?

25 A. These are column names from the pay table, from the

Michael Murray - Direct by Mr. Herrera

1 pay records.

2 Q. Mr. Murray, if I were to bring the pay table back
3 up and I'm not going to, are you saying that you would
4 find these brackets within that pay data summary?

5 A. Yes. Again, depending on the facility, some
6 facilities might not have every single one of these
7 fields but across all of them, they would be.

8 Q. For example, we saw earlier PU pay?

9 A. Correct.

10 Q. Does that correspond exactly to the PU pay column
11 we reviewed earlier today?

12 A. Yes.

13 Q. How did you know, Mr. Murray, which of the pay data
14 fields to include in the numerator?

15 A. This was a list provided by the attorneys.

16 Q. What is being captured in these specific rows?

17 A. It's my understanding it's pay that was received
18 for work done, not like vacation pay or sick pay.

19 Q. So this list of numerators, is it limited
20 exclusively to pay for hours worked?

21 A. Yes.

22 Q. There's no vacation time or sick time?

23 A. Correct.

24 Q. Why was it necessary to not include those?

25 A. My understanding is that's how the rules are with

Michael Murray - Direct by Mr. Herrera

1 the instructions.

2 Q. Now, there is in this page OT pay. Does that
3 correspond to the OT pay column we saw in the pay data
4 sheet earlier today?

5 A. Yes.

6 Q. Mr. Murray, why is the OT pay numerator being
7 multiplied by two-thirds?

8 A. That's to remove the premium part of the OT
9 computation.

10 Q. Why is that being done?

11 A. We are trying to compute the regular rates so if
12 you leave the premium part of the OT pay in there, it is
13 going to inflate the computed regular rate. So only the
14 portion of the OT pay that was paid for the regular
15 portion of the overtime hours.

16 Q. Going back to slide three, Mr. Murray, is what you
17 are saying that by multiplying by two-thirds, you are
18 just isolating the regular pay of the overtime hour that
19 is in the defendants' pay data?

20 A. Correct.

21 Q. Let's go to the denominators, Mr. Murray. What are
22 these?

23 A. So these are hour fields from the pay data. These
24 are for hours worked.

25 Q. So is the idea here, Mr. Murray, pay over hours

Michael Murray - Direct by Mr. Herrera

1 paid for?

2 A. Correct.

3 Q. How did you know to use these fields in the
4 denominator?

5 A. This was the same instruction from the attorney for
6 calculating the computed regular rate.

7 Q. What do these values, these categories, as I'll
8 call them, what do they reflect in terms of hours?

9 A. They reflect hours worked.

10 Q. So, again --

11 A. For a pay period.

12 Q. Forgive me. I did not mean to interrupt you.

13 Again, not vacation hours?

14 A. Correct.

15 Q. Not leave hours?

16 A. Correct.

17 Q. So what's the points of this appendix? What is end
18 goal here?

19 A. So the query eight is using these fields to compute
20 the computed regular rate and subsequently it is used to
21 determine back wages. So it's just showing, documenting
22 what fields were used to make that calculation.

23 Q. In this appendix does your summary accurately
24 capture for each employee each pay period and each
25 building, the amount of pay they received over the

Michael Murray - Direct by Mr. Herrera

1 number of hours they worked to receive that pay?

2 A. Yes.

3 Q. Let's go to appendix D, Mr. Murray. You mentioned
4 earlier, correct me if I'm wrong, in determining if a
5 back wage was due, did you account for overtime payments
6 that the employer did, in fact, make?

7 A. Yes.

8 Q. How so?

9 A. We looked at the overtime pay fields and also other
10 fields that were provided to me as HOT, which I think is
11 holiday pay for working on the holiday, not for taking a
12 holiday. Then there was a holiday double pay for
13 working on a holiday. These were included in the
14 overtime credit.

15 The last row there, the regular over 80 is for
16 instances where they were paid for more than 80 hours in
17 a two-week pay period. This was to account for they
18 should have been paid in overtime hours. My
19 understanding is you still want to credit the regular
20 part that was paid. It's just the premium part that was
21 not paid. That is added to the credit.

22 Q. So let's now go to slide four, Mr. Murray.

23 A. Okay.

24 Q. We have our same example from earlier. The
25 employee is working 100 hours in the pay period. Simple

Michael Murray - Direct by Mr. Herrera

1 rule here, 40 hours of those 100 hours, 80 is regular,
2 20 OT, same rate, \$10 an hour.

3 Now we are going to introduce the factor, and
4 this is a hypothetical, of course. The pay data is
5 telling you that this employee was, in fact, paid
6 \$1,100. Just assume that for purposes of this example.

7 Can you walk me through in this set of
8 circumstances how your summary accounted for that \$1,100
9 as compared to its determination as to how much money is
10 due?

11 A. So the first -- there's two \$1,100 figures here.
12 The first one is representing overtime earned based on
13 all the queries and then the \$1,100, the second one is
14 credit the employer paid and it subtracts the credit
15 from the OT earned and in this case, there are zero
16 dollars left in back wages.

17 Q. So if your summary saw that an employee was due
18 \$1,100 for working 80 regular hours and 20 overtime
19 hours and the pay data said that person was paid \$1,100,
20 would there be any back wages owed?

21 A. No.

22 Q. Does your model account, as far as you can tell,
23 for the amounts the employers paid to the employees each
24 pay period for overtime compensation?

25 A. Yes.

Michael Murray - Direct by Mr. Herrera

1 Q. Does it include the compensation for regular time?

2 A. Yes, it does.

3 Q. Let's go to a harder example.

4 MR. HERRERA: And then, Your Honor, when do
5 you want to break for lunch?

6 THE COURT: Noon, if possible. If you are at
7 a breaking point slightly before or slightly after.

8 MR. HERRERA: I think it's beneficial to go
9 through another example.

10 Q. Let's go to slide five, Mr. Murray. Still trying
11 to stick with some of the same basic facts here. We
12 have our employee. They work 100 hours, 80 regular, 20
13 OT. Regular rate is \$10 an hour.

14 This time the pay data is telling you they
15 were paid \$1,050. \$1,000 in regular pay and \$50 in OT
16 pay.

17 First off I should ask you, Mr. Murray, did
18 you see instances where the employer in this case
19 overpaid for regular hours worked?

20 A. There were instances where the credit was larger
21 than the overtime earned is that what you mean?

22 Q. In this example, for instance, here this employee
23 worked 80 regular hours but in my hypothetical, they
24 were paid a thousand dollars for those 80 hours even
25 though are at \$10.

Michael Murray - Direct by Mr. Herrera

1 So I would imagine if this was done correctly,
2 this employee would get \$800 for working 80 regular
3 hours but in the hypothetical I'm giving you, they are
4 paid a thousand?

5 A. Yes. There were instances where employees were
6 paid for more than 80 regular hours. This could be one
7 of these.

8 Q. When that happened, Mr. Murray, does your summary
9 account for those overpayments?

10 A. Yes.

11 Q. Are they part of the credit given to the employer
12 against the back wage owed?

13 A. Yes, they are.

14 Q. Talk me through what is happening in this slide,
15 please.

16 A. So the OT credit, in this case, a thousand. So we
17 are going to have to assume they were paid for 100
18 regular hours. So the regular field in the pay data
19 says 100, they were paid a thousand. The 200, the time
20 over the 80, so the \$200 is applied to the credit.

21 You don't see that in the slide but OT credit
22 would be this \$50 that was paid for overtime. Also, the
23 \$200 that was paid for the additional regular hours over
24 80. So a total of \$250 credit. The \$300 overtime
25 earned, there is \$50 left in back wages.

Michael Murray - Direct by Mr. Herrera

1 Q. Let's go to slide six, Mr. Murray. We are going to
2 change the variable slightly here.

3 Now we have the employee. They were working
4 100 hours, so 80 regular, 20 overtime. The rate is the
5 same. This time they receive \$900 in regular pay
6 according to the pay data for 90 regular hours and no
7 overtime.

8 Can you walk me through what happened in this
9 scenario in your summary.

10 A. This is a little similar to the previous one but
11 without the overtime being paid.

12 In this case, the overtime premium credit is
13 zero but there is still \$100 credit for the regular time
14 that was paid over 80. So we have a total credit of
15 \$100 and they have 20 overtime hours which would be \$300
16 earned.

17 So in this case, the back wages is \$1,100
18 minus the \$900 or you can say 300 minus the 100, same
19 number, you end up with \$200 back wages.

20 Q. So in this instance, Mr. Murray, even though there
21 is no overtime pay at all?

22 A. Correct.

23 Q. Would your summary account for the amount of
24 regular time paid?

25 A. Yes.

Michael Murray - Direct by Mr. Herrera

1 Q. Even if it does not match the amount of regular
2 hours worked in the time data?

3 A. So the time data saying they worked 100 hours?

4 Q. Yes.

5 A. It should be 80 hours of regular time, 20 hours of
6 overtime, yes. The fact they said there was 90 hours in
7 pay data, it accounts for that and applies it to the
8 credit.

9 Q. Your summary would still see that credit?

10 A. Yes.

11 MR. HERRERA: This is a decent place to break,
12 Your Honor.

13 THE COURT: Okay. We will reconvene at 1:00.

14 (Whereupon, a luncheon recess was taken.)

15 (Afternoon session, 1:00 p.m. In open court.)

16 THE COURT: Mr. Herrera, are you ready?

17 MR. HERRERA: Yes.

18 THE COURT: You may proceed.

19 BY MR. HERRERA:

20 Q. Welcome back, Mr. Murray.

21 I want to return to appendix D within PX5
22 which is on Page 9. We had discussed before the
23 explanation for the multiplication of OT pay by
24 two-thirds. What is the purpose of that?

25 A. To split the OT pay up into a straight time credit

Michael Murray - Direct by Mr. Herrera

1 portion and a premium credit portion. Two-thirds is
2 essentially the regular rate and the premium portion is
3 that .5 part. Multiply by two-thirds to get one done at
4 regular rate and one-third at the premium rate.

5 Q. Can you help me understand why for HOT-DBLA, it's a
6 multiplication of one-half as opposed to two-thirds?

7 A. My understanding is that pay rate is two times the
8 regular rate. So divided by half to get the premium
9 rate and half to get the regular rate.

10 Q. So is it for HOT-DBLA pay, the overtime hour is not
11 1.5 but two?

12 A. Yes.

13 Q. Can you help me understand the reg-80, parenthesis
14 440 if only one workweek, close parenthesis, times paid
15 a regular rate?

16 A. This is some of the records that will have more
17 than 80 hours for a two-week pay period or more than 40
18 regular hours for a week. In those cases, the hours
19 over 80 are 40 should have been overtime. They were
20 paid at the regular rate.

21 So I'm capturing the regular rate portion for
22 the credit field with the premium time portion which
23 would be zero in this case.

24 Q. Is that one of the examples we saw in the slides
25 earlier where they overpaid the number of regular hours?

Michael Murray - Direct by Mr. Herrera

1 A. Correct.

2 Q. Mr. Murray, there is a line here in appendix D at
3 the end of the first paragraph. Can you read it for me,
4 please.

5 A. It says, note that if any of the overtime fields
6 used to compute credit are negative, then they are
7 counted as zero.

8 Q. Mr. Murray, to the best of your ability, what does
9 it mean if an overtime field used to compute credit is
10 negative?

11 A. My understanding is that would be a correction for
12 a previous pay period, when overtime was paid and it
13 shouldn't have been. So I was asked to not use those
14 for purposes of credit or determining the credit.

15 Q. Did you see instances within the pay data or if an
16 employee at least on the face of the record was paid
17 negative money?

18 A. Yes.

19 Q. How often did that happen?

20 A. Not very often.

21 Q. Why did you count it as zero?

22 A. If I included the negative number, it would reduce
23 the credit for that pay period.

24 Q. So by using a zero instead of a negative, what
25 effect, if any, did it have on the amount of back wages

Michael Murray - Direct by Mr. Herrera

1 in this case?

2 A. It would -- well, it would decrease the back wages
3 relative to it including the negative amount.

4 Q. Did it --

5 A. The negative --

6 Q. I'm so sorry. Please continue.

7 A. If I included the negative number, it would
8 increase the back wages.

9 Q. By removing it or creating a zero, did it decrease
10 the back wages in this case?

11 A. Yes.

12 Q. I want to return now, Mr. Murray, to Page 2 of PX5.
13 I want you to, if you can, explain, you don't have to
14 read this, just explain what does this language mean
15 that I'm highlighting beginning with the words note DEP?

16 A. These are the subset of records where employees are
17 working at different facilities and have overlapping pay
18 periods. It's more difficult to relate the time data to
19 the pay data.

20 So these are -- I indicated them with a yes/no
21 field for the main queries. That field is used to
22 exclude them. There's a set of queries described in
23 appendix F where these records are computed, used to
24 getting back wages separately.

25 Q. Why were they calculated separately?

Michael Murray - Direct by Mr. Herrera

1 A. I had to use slightly different logic for
2 determining the weeks and also we couldn't find a way of
3 to consider the 8/80 rule for these records, so didn't
4 address that. So that query doesn't exist in the
5 appendix.

6 Q. Why couldn't you consider the 8/80 rule for these
7 employees?

8 A. Because different facilities, they might
9 have -- some might be using the 8/80 rule, some might
10 not. So it's too complicated.

11 Q. Let's go to appendix F, Mr. Murray. Well, I should
12 ask. Is it within this document?

13 A. Yes.

14 Q. Just in general terms, could you describe what
15 appendix F is, please?

16 A. Here at the beginning it states: It is reusing
17 queries one, two from the previous back wage
18 computations. Then it describes a set of new queries
19 that roughly do the same thing, sum data by day and
20 week. If they are missing punches, they use the average
21 time.

22 It covers a lot of the steps from the original
23 set of queries. It just ends up not looking at a pay
24 period but at individual weeks.

25 Q. Why did it look at individual weeks?

Michael Murray - Direct by Mr. Herrera

1 A. Just the way the pay periods overlapped, it was too
2 complicated to bring it up to a pay period level.

3 Q. Do you know, Mr. Murray, about how many records
4 within the data set are subject to the appendix F
5 process?

6 A. I think it was around, between 15,000 and 30,000.
7 I can't recall the exact number. It was no more than
8 30,000 records out of two million.

9 Q. Was it a relatively small number of the total
10 records?

11 A. Yes.

12 Q. Can you explain to me what is the principle
13 difference between the queries in appendix F and the
14 queries we saw earlier in this document. What is the
15 mechanical difference, if you could explain that?

16 A. Mechanically the biggest difference is that there's
17 no query for pay period for 80-hour period. It
18 goes -- summarizes the hours for the week, determines
19 overtime due based on that and then it does the back
20 wage computations.

21 Q. Other than to address the issue of an employee
22 working in multiple facilities with distinct payroll
23 rules, is the process here otherwise the same as the
24 queries that are above in PX5?

25 A. Yes.

Michael Murray - Direct by Mr. Herrera

1 Q. Let's talk about A6, query A6. Can you walk me
2 through how query A6 is computing the regular rates,
3 please?

4 A. So the data in the pay table is in two-week
5 increments. So some of the time data might be related
6 to two or more of these pay records. The only way to
7 compute overtime was to take the pay data and break it
8 into a weekly basis from the two-week basis that it's in
9 and then sum up by those weeks.

10 For that we are using the ratio like we did as
11 we discussed earlier in the time data. We used the time
12 for a week, two weeks in a pay period to create a ratio
13 to kind of split that, split that pay data up.

14 So you'll have pay data from two different
15 facilities over a period of weeks and we sum it by the
16 weeks. Also a way to reassemble the data based on a
17 weekly basis.

18 Q. Let's go to query A7 for just a moment, Mr. Murray.
19 Can you just explain why here the total hours are
20 computed by subtracting 40 for the total weekly hours
21 computed here in A6?

22 A. A6 would have hours worked for a week and we're not
23 considering the 8/80 rule. So we only look at the rule
24 if you work over 40 hours, you are owed overtime.

25 Q. Let's go to the last sentence of A7. Can you

Michael Murray - Direct by Mr. Herrera

1 explain to me -- first, I'll ask you to read the
2 sentence, please.

3 A. It says use the sub queries to determine the
4 primary facility and department and employee worked at
5 each week by choosing the facility and department as the
6 most time data records for each week.

7 So this set of logic in the other set of
8 queries because employees could work in different
9 departments or facilities within a week. When you're
10 summing up these records in Microsoft Access, what will
11 happen is the sum will be grouped on the facility where
12 the department.

13 Let's say within one week they worked in two
14 departments. It will return two records instead of just
15 one total for the week. There will be two totals and
16 that won't work. I need to have just one number for
17 that week.

18 So the sub queries look at the time data for
19 each week the employee worked, determines what was the
20 predominant department and predominant facility they
21 worked at and if it happens to be a tie, they worked the
22 same number of days in each, it just takes alphabetical,
23 sorts it and takes the first one.

24 So in the end, we have just one facility and
25 one department for each employee for each week.

Michael Murray - Direct by Mr. Herrera

1 Q. Thank you, Mr. Murray. Let's put PX5 aside for a
2 moment.

3 I'll ask you at any point did you create a
4 summary of become back wages due using the methodology
5 we just discussed in PX5?

6 A. Yes.

7 Q. I'm going to show you a copy and the Court a copy
8 of what's been premarked as PX6.

9 MR. HERRERA: Because of the nature of the
10 data, Your Honor, it is only electronic.

11 THE COURT: Okay. PX6.

12 Q. Mr. Murray, I opened a folder called PX6. Do you
13 see that on the screen?

14 A. Yes, I do.

15 Q. What do you see within the folder labeled PX6?

16 A. I see three files, Excel files, spreadsheets.

17 Q. Do you recognize these files?

18 A. Yes.

19 Q. What are they?

20 A. These display the results of the back wage
21 computations in a readable format.

22 Q. Who created these Excel sheets, Mr. Murray?

23 A. I created the second one completely. For the other
24 two, I provided the attorney tables which they cleaned
25 up because they weren't formatted nicely.

Michael Murray - Direct by Mr. Herrera

1 Q. Did you provide the substantive figures -- well, I
2 guess identify for me which one you created entirely?

3 A. The second one, the CHMS Wage Computations
4 September 2015 to March 2023.

5 Q. So the other two Excel sheets, Summary Tables and
6 ED and Bonus Summary Tables, did you provide the
7 underlying data for those two spreadsheets?

8 A. Yes, I did.

9 Q. How did you create these Excel sheets, Mr. Murray?

10 A. So in Microsoft Access, you can run a query. You
11 get your set of results. You can export that as an
12 Excel sheet.

13 When it's exported, it doesn't have any
14 format. The fields are all very narrow. You can't read
15 the data. You have to take that spreadsheet and make it
16 readable and add some color to it and some text
17 formatting to make it easier.

18 Q. Mr. Murray, in the process of creating these Excel
19 sheets from Microsoft Access, did you change any of the
20 underlying values in the pay and time data that the
21 defendants provided?

22 A. No.

23 Q. Do these Excel sheets in PX6, do they account for
24 all pay data that the defendants provided to you?

25 A. Yes.

Michael Murray - Direct by Mr. Herrera

1 Q. Do they account for all time data that the
2 defendants provided to you?

3 A. Yes.

4 Q. This CHMS wage computations underscore SEP 2015 to
5 MAR 2023 underscore 2024-01-08. Did you create this
6 Excel sheet by yourself?

7 A. Yes, I did.

8 Q. When did you create it?

9 A. January 8, the date stamped on it, on the
10 particular spreadsheet.

11 Q. Did you review this spreadsheet to ensure its
12 accuracy?

13 A. Yes.

14 Q. When did you do that?

15 A. Did you say when or why?

16 Q. When.

17 A. After I created it, I compared it to the data in
18 the database to make sure it was all there.

19 Q. As far as you know, Mr. Murray, are the figures in
20 that spreadsheet that I just identified, are they
21 accurate?

22 A. Yes.

23 Q. Do you stand by them?

24 A. Yes, I do.

25 MR. HERRERA: Your Honor, we request PX6 be

Michael Murray - Direct by Mr. Herrera

1 entered into the record.

2 THE COURT: Any objection?

3 MR. SCHWARTZ: No, sir.

4 THE COURT: It's admitted.

5 MR. HERRERA: For this one, Your Honor, we
6 have a set of flash drives that contain JX52 to 58 and
7 they will also include PX6 files.

8 THE COURT: Okay. Have you given a copy of
9 that to opposing counsel.

10 MR. HERRERA: I did give them a copy.

11 THE COURT: Whatever you are giving us, I just
12 ask you give them, too.

13 MR. SCHWARTZ: This is the one where there
14 were SSNs?

15 MR. HERRERA: No. This is the PX6 documents
16 that we sent.

17 MR. SCHWARTZ: The computations?

18 MS. PRESLEY: The underlining data in the 50s
19 that you hid when you showed it on the screen, you are
20 not entering that?

21 MR. HERRERA: The JX data?

22 MR. SCHWARTZ: I think it was JX5. There are
23 sheets that would have contained SSNs. The document has
24 them. Those need to be redacted before that could be
25 presented.

Michael Murray - Direct by Mr. Herrera

1 MR. HERRERA: I think I understand. Your
2 Honor, JX52 through JX58, all the payroll data, time
3 data in the original source from the defendants
4 contained Social Security numbers on some of the files
5 for the employees.

6 The DOL did not modify any of those documents
7 for any reason. If Your Honor would prefer, the Court's
8 copy can be redacted to remove those SSNs. As you saw,
9 we are not displaying any of that in open court or
10 filing it on the docket.

11 THE COURT: It can be filed under seal. If
12 there is personal identifying information, rather than
13 going through the laborious process of redacting
14 everything, we can file it under seal.

15 MR. SCHWARTZ: That's perfectly acceptable.

16 THE COURT: Why don't we do this as a
17 housekeeping matter. At the end of the day today, I'm
18 not sure if it's three exhibits or one exhibit that has
19 the personal identifying information.

20 MR. HERRERA: So the personal identifying
21 information is contained not in every single sheet but
22 within at various points the spreadsheets contained in
23 JX52 through JX58.

24 THE COURT: JX52 through JX58, any objection
25 to having those documents filed under sealed?

Michael Murray - Direct by Mr. Herrera

1 MR. SCHWARTZ: Not at all.

2 THE COURT: JX52 through JX58 are hereby
3 sealed. The Court finds good cause to do so because of
4 the inclusion of personal identifying information
5 including but not limited to Social Security numbers.
6 So ordered.

7 MR. HERRERA: Thank you, Your Honor.

8 Q. Mr. Murray, I'm going to open this document that
9 you said you created. It's 335,880 kilobytes. Is that
10 consistent with your recollection of the file you
11 created?

12 A. Yes.

13 Q. The file on my other screen I'm going to move to
14 the monitor that is visible to everyone.

15 Mr. Murray, can you please explain what we're
16 looking at in sheet title CHMS underscore wage
17 underscore computations underscore SEP 2015 to MAR 2023
18 underscore 2024-01-08?

19 A. The spreadsheet has multiple tabs or sheets within
20 it. We are currently looking at the first sheet which
21 is all back wages by employee. This is a list of
22 employees and the total amount of back wages computed
23 for each one. Also, it includes a start date and an end
24 date taken from the data when they were working.

25 Q. We'll start with row three of the sheet all back

Michael Murray - Direct by Mr. Herrera

1 wages by employee within the Excel sheet. What does it
2 signify for the first name Paul Abayes, A-b-a-y-e-s,
3 column B and column C?

4 A. That indicates -- this is actually from the pay
5 data they were paid from August 22, 2015 through May 9,
6 2020.

7 Q. Mr. Murray, if I wanted to know what's the top line
8 number of back wages, where would I go in this document?

9 A. The total was at the bottom would so you have to
10 scroll down.

11 Q. I'll do that. Can you tell me what is in row 7815
12 of this Excel sheet?

13 A. Total back wages, 20,540,880.57.

14 Q. Is that the total amount of back wages your summary
15 computes as being owed to the employees of these 15
16 facilities?

17 A. Yes.

18 Q. Can you tell us how much of this reflects unpaid
19 overtime wages, if any?

20 A. It reflects about sixteen and a half million of
21 unpaid overtime.

22 Q. What is the remainder, the difference between that
23 figure and the 20.548 million?

24 A. The remainder is regular time owed, also called gap
25 time.

Michael Murray - Direct by Mr. Herrera

1 Q. Why is regular time included in these back wages?

2 A. That occurs when there's a week where the employee
3 was paid for less than 40 hours and they're owed
4 overtime.

5 So there's a figure for the regular wages due
6 and for the hours less than 40 that were unpaid and then
7 the overtime for the hours over 40.

8 Q. Mr. Murray, are there instances that you saw where
9 an employee had regular time unpaid in a week where they
10 did not work an overtime hour?

11 A. Yes.

12 Q. Does this back wages figure include any of that
13 regular time that which occurred in a week where no
14 overtime was worked?

15 A. No.

16 Q. What time period does this summary cover,
17 Mr. Murray?

18 A. August of 2015 through February, March 2023.

19 Q. Which facilities have data contained of the 15
20 within this summary?

21 A. All 15 facilities.

22 Q. What is the total number of employees for which you
23 had sufficient records to determine if they were due
24 back wages?

25 A. 7,811.

Michael Murray - Direct by Mr. Herrera

1 Q. According to your summary, Mr. Murray, of that
2 7,811, how many of the employees are due any amount of
3 back wages?

4 A. Approximately 5,500.

5 Q. I'll let you answer based on your knowledge, but
6 those employees, the 5,500 employees that you think are
7 owed back wages, do they have a consistent amount of
8 back wages or do the amounts vary?

9 A. The amounts vary.

10 Q. Why do they vary?

11 A. It depends on how many weeks the employee worked,
12 the pay rate they were paid, whether or not they were
13 working overtime.

14 Q. Mr. Murray, the back wages for each employee, are
15 they particular to that specific employee's pay and time
16 experience at these buildings within the time periods in
17 columns B and C?

18 A. Yes.

19 Q. Let's go through some of these sheets, Mr. Murray.
20 I'm going to go to the next sheet, all back wages by
21 facility. I will zoom in to make it more readable. Can
22 you tell me what I'm seeing here, please.

23 A. Here you're seeing for each facility the total
24 amount of back wages are associated for employees
25 working at those facilities.

Michael Murray - Direct by Mr. Herrera

1 Q. What do the start and end dates in columns B and C
2 indicate here?

3 A. Here they are indicating the earliest pay period
4 for that facility which is in the data and the latest
5 date which is in the data.

6 Q. Are the back wages depicted here, are they just
7 another representation of the figure that we just saw
8 that was split up by employee?

9 A. Yes. They are just grouped in a different way.
10 They are grouped by facility instead of by employee.

11 Q. Let's go to the next sheet, Mr. Murray. All back
12 wages by dept. Can you tell me what we are seeing in
13 this sheet?

14 A. Here the back wages are grouped by the primary
15 department the employees worked in.

16 Q. How were you able to tell what the primary
17 department was for an employee?

18 A. So I used a query looking at the time data. If an
19 employee happened to be working in different departments
20 within one week, it takes the most common or the highest
21 number of records associated with that department, it
22 becomes the primary department. If they happen to be
23 the same number of records for each department within
24 one week, then it's going to sort it alphabetically and
25 take the first.

Michael Murray - Direct by Mr. Herrera

1 Q. For the back wages shown here in this sheet,
2 Mr. Murray, are they the same universe of back wages
3 that we previously saw that were identified by the
4 facility and by employee?

5 A. Yes.

6 Q. Let's go to the next sheet, Mr. Murray. All back
7 wages combined. Can you tell me what this sheet is,
8 please?

9 A. This sheet lists for every employee every week pay
10 period they worked and shows back wages at the end and
11 it also has additional information.

12 Q. What additional information does it have?

13 A. It shows the rates that were used, the regular
14 rate, computed regular rate, also the OT straight
15 credit. There was a field for OT straight credit
16 additional. That's actually the regular hours that
17 would be paid over 80 and a total for the OT straight
18 credit and OT premium credit and we see the total hours
19 worked from the time data and the total overtime hours
20 from the time data as well.

21 Then there is a column showing the computed
22 overtime straight pay and premium pay earned. There is
23 a column for total unpaid regular hours and wages and
24 then unpaid OT wages. Those are added up for the total
25 back wages for each employee for each pay period.

Michael Murray - Direct by Mr. Herrera

1 Q. Mr. Murray, does every value in this sheet all back
2 wages combined, does it originally come from the payroll
3 data the defendants provided?

4 A. Yes. It's computed using the numbers from the
5 payroll data.

6 Q. You said their numbers?

7 A. The numbers from the payroll data, yes, their
8 numbers.

9 Q. At any point before reaching what we're seeing
10 here, did your summary or your process modify any of the
11 payroll data, the pay and time data that the defendants
12 provided that served as a basis for this summary?

13 A. No, it didn't.

14 Q. So, Mr. Murray, this sheet all back wages combined,
15 is it the beginning or the end of your process?

16 A. This is the end. So it's combining. The reason
17 it's called combined, it takes query nine or the main
18 query, I think it's query eight from the subset of
19 queries that were used for the multiple facility
20 employees and it combines them together. So we have all
21 the back wages across the entire sub data.

22 Q. Mr. Murray, in this sheet all back wages combined,
23 if I wanted to find a specific employee at one of these
24 buildings, could I do that in this sheet?

25 A. Yes.

Michael Murray - Direct by Mr. Herrera

1 Q. How?

2 A. You can scroll through alphabetically. They are
3 sorted or you can do a find and search for the employee.

4 When you find the employee, you want to see
5 the details, you have to click the little plus sign next
6 to the employee's name and it will display the detail
7 records.

8 Q. Is the plus sign at the very left-hand side of the
9 Excel sheet?

10 A. Yes, it is.

11 Q. Let the record reflect I'm going to click the plus
12 sign immediately to the left of row 1345, all back wages
13 combined. What am I seeing here now after having done
14 that, Mr. Murray?

15 A. You are seeing a list of pay periods for the
16 employee in question, Benjamin Adams, and it provides
17 the results of the query for each pay period.

18 Q. If I selected a particular employee, would all the
19 information I needed to know the back wages for that
20 employee be contained in the columns on this sheet?

21 A. Yes.

22 Q. You said this is the end of your process,
23 Mr. Murray. Where is the beginning?

24 A. For that you have to scroll to the very last tab in
25 this spreadsheet, which would be a zero one.

Michael Murray - Direct by Mr. Herrera

1 Q. I'm going to scroll to the right with all these
2 sheets in the spreadsheet. Do you see the sheet you
3 were just referring to?

4 A. Yes. It's actually splitting the screen because
5 the number of rows is over two million so I have to
6 provide roughly 700,000 for each sheet.

7 Q. How is it divided?

8 A. Alphabetically by employee last name.

9 Q. I'm going click in sheet 01 time data HRS by day
10 total A. What are we looking at here, Mr. Murray?

11 A. This is the results of query one and it shows the
12 employees with last names starting with A to G, each day
13 they worked and total hours by date.

14 Q. Where do these total hours by date come from,
15 Mr. Murray?

16 A. These come from the time data.

17 Q. Where in the time data do they come from?

18 A. The total hours by date is computed by subtracting
19 the in time punch from the out time punch for each
20 employee.

21 So this particular query only looks at records
22 that have both the in time punch and the out time punch.

23 Q. Are you saying the total hours by date, column C,
24 directly correlate to the punches in the time data?

25 A. That's correct.

Michael Murray - Direct by Mr. Herrera

1 Q. I'm going to go to now what's marked as sheet 02
2 time data, employee average hours. Can you tell me what
3 this sheet is, Mr. Murray?

4 A. So this is showing using the results of query one
5 the average number of hours per date each employee
6 worked.

7 Q. Just remind us, Mr. Murray, why is an average
8 relevant to what you do?

9 A. So this is used in a later query, query No. 4, for
10 those instances where there is a day that is missing a
11 punch and it can't be determined exactly how many hours
12 the employee worked, we use this average for that
13 employee.

14 Q. Each employee has their own specific average?

15 A. Yes.

16 Q. How is the average determined?

17 A. If you look at the records in query one there, it's
18 the average of all the daily hours that were computed.

19 Q. For that specific employee?

20 A. For that specific employee.

21 Q. Let's go to time data 03 time data hours by day A.
22 Can you identify what this sheet is, Mr. Murray?

23 A. Yes. This is the results of query three, again
24 group are sorted by employee's last name from A to G.

25 It's showing the total amount of hours worked

Michael Murray - Direct by Mr. Herrera

1 per day. In this case, you see some blanks for days
2 where there was a missing punch and it couldn't be
3 determined how many hours.

4 Q. The total hours, Mr. Murray, which is column eight,
5 do those exactly match the total hours for these
6 employees in query one other than where there is a
7 missing punch?

8 A. Yes.

9 Q. Is query three similarly divided by alphabetical
10 order?

11 A. Yes.

12 Q. Mr. Murray, immediately to left of 03 time data HRS
13 by day C, there is a sheet here. A 03 time data hours
14 by day. I'm going to click it now. What is this sheet?

15 A. This is one of the separate queries that were run
16 for employees working at multiple facilities. It's
17 similarly just adding up the number of hours per day and
18 if there is a missing time punch for that day, it puts
19 in a blank.

20 Q. Is this referring to the appendix F process?

21 A. Yes, it is.

22 Q. Let's go to the next sheet, 04 time data HRS by day
23 OT A. Can you identify what this sheet is, Mr. Murray,
24 please?

25 A. This sheet is showing all the employees with the

Michael Murray - Direct by Mr. Herrera

1 last name starting with an A through last name starting
2 with G.

3 Here we are computing using the
4 average -- taking the results of query three and query
5 two, where there is a missing value in query three, it
6 puts the average in query two. I believe it also
7 computes the hours over eight for each day that can be
8 used for the 8/80 rule later on.

9 Q. Let's get a specific example here, Mr. Murray. If
10 you can go to row ten of this sheet.

11 Paul Abayes on August 26, 2015. What is going
12 on here with respect to columns F and G?

13 A. So column F is coming from query three. There was
14 a missing punch so a blank value was inserted for the
15 total hours.

16 Then column G is showing that the average
17 hours you can see in column B and repeats because it's
18 the same employee. That value gets substituted for the
19 blank and now you see the 7.25 average in place of a
20 missing value.

21 Q. When you say this person was missing a punch on
22 this day, were they missing both punches, one punch?

23 A. It could be either one or the other. Rarely it
24 would be both.

25 Q. If an employee does not have either an in and out

Michael Murray - Direct by Mr. Herrera

1 punch, would they be included in these queries?

2 A. The rule was if they were missing the in punch and
3 missing the out punch and missing a value in the
4 exceptions field, then it was not included.

5 If they happened to have, and this rarely
6 happened, a value in the exception field and two blanks,
7 a blank in pouch and a blank out punch, it was included.
8 That's only about a couple thousand records out of two
9 million.

10 Q. In the exception field, Mr. Murray, is that where
11 we saw those BD30 values earlier?

12 A. That's correct.

13 Q. Can you explain what is happening with columns J
14 and K, please?

15 A. So J is computing any hours over eight. So the row
16 three and four there you can see the employee worked
17 nine hours total. So column J shows one hour and an
18 hour over eight and K is whether or not the 8/80 rule
19 should be applied in this case.

20 In this case, it false, so it will not be
21 applied later on when you compute overtime earned.

22 Q. How does the summary determine whether the
23 application of the 8/80 rule is false or true?

24 A. There are rules in the appendix. Depends on the
25 facility the employee worked at and the department they

Michael Murray - Direct by Mr. Herrera

1 were working in and in case of Brighton, it depends on
2 when they were working.

3 Q. Query four, Mr. Murray, is it similarly organized
4 alphabetically?

5 A. Yes, it's into three.

6 Q. This A04 time data hours by day OT, is that again
7 referring to the employees who worked in multiple
8 facilities in the same pay period?

9 A. Yes, it is.

10 Q. Let's go to 05 time data hours by week. Can you
11 tell me what we are looking at now?

12 A. Query five is building off of query four. It is
13 taking all those daily values and summing them up by
14 week and it is also introducing the regular hours from
15 the pay data, regular hours that were paid using that
16 ratio that we see in column F. The ratio is based on
17 total hours worked each week within a pay period.

18 Q. Is this the prorating that you described earlier?

19 A. Yes.

20 Q. Again, why were you prorating regular hours for
21 purposes of this summary?

22 A. So in order to determine whether there was gap time
23 applicable for each week, we need to know how many
24 regular hours were paid per week but that's not directly
25 knowable from the pay data because it's sum by two-week

Michael Murray - Direct by Mr. Herrera

1 periods. The ratio is just dividing the regular hours
2 for the two-week period between each week trying to do
3 so based on how many hours they actually worked each
4 week.

5 Q. This sheet, Mr. Murray, does not appear to be split
6 into three parts like the earlier ones. Why?

7 A. When the records are totaled by week, they are
8 going to be reduced roughly by a factor of five to one.
9 So two million records become 400,000 and that fits on
10 one sheet.

11 Q. The sheet that is immediately to the left -- really
12 I should just ask you. If one of the sheets in this
13 Excel sheet begins with lower case "a," what, if
14 anything, does it signify?

15 A. Lower case "a" signifies it's the special queries
16 for the multi-facility employees.

17 Q. This is appendix F?

18 A. Appendix F.

19 Q. While we're waiting for my computer,
20 Mr. Murray -- there it is. I'm going to go now to 06
21 time data HRS by max W-E. Can you identify what this
22 sheet is, please?

23 A. So maximum WE stands for max week ending. For each
24 pay period you have two weekend dates and the first one
25 and second one. The second one is max weekend date. So

Michael Murray - Direct by Mr. Herrera

1 we are grouping on that date to sum up the hours by the
2 two-week period.

3 Q. Why did you do that?

4 A. This is needed for the 8/80 rule. So we need to
5 count the number of hours over 80 for the pay period.
6 That's primarily what this query does.

7 Q. Mr. Murray, column C, total hours less break. Is
8 that simply carrying forward the hours that had been
9 computed in the earlier queries?

10 A. Yes. It's the hours worked from the time data and
11 it carries over from each query. Keeps getting summed
12 up by a longer period of time.

13 Q. Let's go to 07 time data OT HRS 8-80 rule. Can you
14 tell me what this sheet is, Mr. Murray?

15 A. So in those cases where an employee's time record
16 shows the 8/80 rule applies, that's indicated by column
17 G, you would see a true.

18 The logic of this query would then look at the
19 column E, OT hours by date, and column F, OT hours by
20 maximum week ending date and it will determine which is
21 the larger of the two and that would be put in column H
22 which is OT hours by max WE date after 8/80 rule.

23 The 8/80 rule does not apply in the logic we
24 look at in column B which is OT hours by week and then
25 any hours over 40 would be counted as OT hours.

Michael Murray - Direct by Mr. Herrera

1 Q. Again, Mr. Murray, column C in this sheet, total
2 hours less break, is it again carrying forward hours
3 determined from the earlier queries?

4 A. Yes, it is.

5 Q. Let's go to the next sheet. 08 pay data computed
6 r-e-g rate. What is this sheet, Mr. Murray?

7 A. It is the result of query eight which looks at the
8 payday table. There is a lot of columns, maybe a
9 hundred. I never counted them. Goes into the double
10 letters.

11 Here it's showing all the information that was
12 used to compute the regular rate and the regular -- paid
13 regular rate.

14 Q. Let's spend a moment going through this sheet. I
15 see here, for example, in columns H and I something
16 called sum of reg and sum of reg pay. Where do the
17 values in column H and I come from?

18 A. Come from adding up the total hours for the pay
19 data for each pay period. There are I think a few cases
20 where employees have a couple pay records. It just
21 makes sure -- the sum combines them but typically, it is
22 one payroll record per pay data.

23 Q. So, Mr. Murray, columns H and I, does it come
24 directly from the defendants' pay data without change?

25 A. Yes.

Michael Murray - Direct by Mr. Herrera

1 Q. Let's go through some of these categories. What
2 values are contained within columns V and W?

3 A. Columns V and W are showing a sum of vacation or
4 vac hours. It doesn't say "hours" but that's what they
5 are and then sum of vac pay.

6 Q. What relevance, if any, do columns V and W have to
7 the back wages calculation?

8 A. They don't. They weren't used in the back wages
9 calculation. Just trying to show all the columns that
10 were in the pay data table.

11 Q. Are you saying your summary imports all the data
12 even if it does not relate to the calculation of back
13 wages?

14 A. That's correct.

15 Q. Is the import of that data just on the face value
16 of the records themselves?

17 A. Yes.

18 Q. If I were to compare, Mr. Murray, the columns in
19 sheet 08 pay data computed reg rate to the defendants'
20 pay data, would I find each of these columns somewhere
21 in that pay data?

22 A. Yes, you would.

23 Q. Okay. We are back, Mr. Murray, to all back wages
24 combined. Just to be clear, those eight or more sheets
25 we just discussed, do all of the sheets that we

Michael Murray - Direct by Mr. Herrera

1 discussed feed into all back wages combined?

2 A. Yes, it does or yes, they do.

3 Q. Are all the values we discussed for time and pay,
4 do they culminate to the results displayed in this sheet
5 all back wages combined?

6 A. Yes, they do.

7 Q. Okay. Let's go to examples. I'm going to ask you
8 to refer back to the PowerPoint beginning at page 7,
9 please.

10 Mr. Murray, for purposes of demonstration, we
11 picked an employee named Donna Whitfield's March 28 2020
12 pay period. I would like you to walk me through how
13 this summary determined if any back wages are due for
14 this person on this pay period. Where would I start?

15 A. You would start with the hours by day. What is
16 missing from here is the week ending date but these
17 hours by day will be eventually totaled by week and then
18 later by weekend.

19 Q. So where should I go in this Excel file if I wanted
20 to begin understanding what the data for this person is?

21 A. From the Excel spreadsheet, you want to go all the
22 way back almost to the end of the tabs to query one
23 total C.

24 Q. Why C, Mr. Murray?

25 A. Alphabetically, the last name Wakefield will be on

Michael Murray - Direct by Mr. Herrera

1 that third sheet.

2 Q. Okay. I'm going to do that. I'm going to now
3 search for Wakefield using the find tool in Excel.

4 Do you see this person's name in 01 time data
5 HRS by day total C, specifically Wakefield, Donna?

6 A. Yes, I do.

7 Q. Mr. Murray, I want to go to the March 28, 2020 pay
8 period. If I search for it, will I find it?

9 A. By the pay period?

10 Q. By the date.

11 A. Yes. If you search for the date, you'll find it.

12 Q. I'm going to do that now. I'm going to search for
13 3-28-2020?

14 A. I thought you meant one of the time dates there.
15 You may not find -- you do in this case. Okay.

16 Q. Let's find it. So perhaps the easier way,
17 Mr. Murray, is if we are looking for the 3-28-2020 pay
18 period, where is that first time I would see that pay
19 period identified in these sheets, which query?

20 A. You may have to go to query six where the hours are
21 added up by pay period.

22 Q. Okay. I'll go there now. 06 time data HRS by max
23 WE. I'll search for Ms. Wakefield's name. Here she is,
24 Mr. Murray. Scroll down to 2020. I'll highlight just
25 for demonstrative purposes.

Michael Murray - Direct by Mr. Herrera

1 MR. HERRERA: The actual exhibit itself will
2 not be highlighted, Your Honor.

3 Q. If I wanted to search for the dates contained
4 within the max week ending date for Ms. Wakefield for
5 this pay period, where would I go?

6 A. From the original files or in this sheet?

7 Q. In this sheet.

8 A. You want to see each actual time data record.

9 Q. I want to see which specific days are included in
10 this pay period?

11 A. I don't know if you can find this in this
12 spreadsheet.

13 Q. I'm going to go to time data hours 04 time data
14 hours by day, OTC and search for Ms. Wakefield's name.
15 Now I'm going to look for that pay period, 3-28-2020.
16 I'm going to highlight 556714 and row 556723.

17 What dates from what you can tell, Mr. Murray,
18 are included in the March 28, 2020 pay period for
19 Ms. Wakefield?

20 A. March 16, 17, 18, 19, 20 and then March 23, 24, 25,
21 26, 27, all in the year 2020.

22 Q. Let's go back to sheet one and search for those
23 dates. Highlight for Ms. Wakefield total hours by May
24 16, 2020 to March 27, 2020. What am I looking at?

25 A. Looking for the total hours from her time punches

Michael Murray - Direct by Mr. Herrera

1 for each day.

2 Q. Is that reflected in slide seven in the
3 presentation I handed you?

4 A. Yes, it is.

5 Q. Now, Mr. Murray, if I wanted to check you, if I
6 wanted to find where these numbers came from, where
7 would I go?

8 A. You would have to go back to the original time
9 data.

10 Q. Let's do it. Where in the original time data would
11 I go to find the time punches for Ms. Wakefield for
12 March 2020?

13 A. That was a data supplement received in 2021. You
14 would have to go to one of the appropriate folders for
15 that data submission.

16 Q. You're saying it's the latest set of data you
17 received?

18 A. For time punches. Sorry. For the time punches
19 it's going to be in the March 2023 set, so the last data
20 set that we received.

21 Q. I'm in JX58 which I believe is the latest set of
22 data. Is that your memory as well?

23 A. Yes.

24 Q. I'm going to wait for my computer to not freeze.
25 Let's see if we can do this from memory while I wait.

Michael Murray - Direct by Mr. Herrera

1 The time data sheets, do you recall how they were
2 labeled?

3 A. Time dates are linked, too.

4 Q. The Excel files themselves, do you recall what
5 their nomenclature was within the time data the
6 defendants provided in raw form?

7 A. It just has date, the name of the field.

8 Q. Just to move things along, Your Honor, I'm going to
9 open this document 2020A. Is this one of the updated
10 time data sheets that the defendants provided?

11 A. Yes, it is.

12 Q. If I wanted to find Ms. Wakefield's March 28, 2020
13 punches, would they be within this document?

14 A. March 20, yes, they will be.

15 Q. I search for Ms. Wakefield. I found her but the
16 name is a little different.

17 A. Yes.

18 Q. Do you know why?

19 A. I assume she changed her name. Used to be Donna
20 Smith or used to be Donna Wakefield and now it's Donna
21 Smith. This is some of the things we had to work with
22 for the employee name unique. We had to pick one
23 version of the name to be the same across the data.

24 Q. This is still the same Donna Wakefield that we saw
25 identified in your spreadsheet?

Michael Murray - Direct by Mr. Herrera

1 A. Yes.

2 Q. Let's try to find her punches, Mr. Murray. We are
3 looking for March 2020, the range March 16, 2020 to
4 March 27, 2020.

5 A. 16 or 17?

6 Q. 16. Just looking at this time data what, if
7 anything, can you tell me about Ms. Wakefield's work on
8 these dates?

9 A. You can see when she started working. On March 16
10 she punched in at 12:33 p.m. and then punched out at
11 8:37 p.m. So subtract the in time from the out time,
12 you would have the total number of hours and minutes
13 that she worked that day.

14 Q. Mr. Murray, if I lined up these punches in their
15 raw form next to the time value by day in your
16 spreadsheet, would they match?

17 A. Yes.

18 Q. Let's go to slide eight, Mr. Murray, of the
19 PowerPoint.

20 A. I have it.

21 Q. Do the punches which I had collected on one page
22 for simplicity, do the punches match the values for the
23 hours worked exactly?

24 A. Yes. You have to do a little math to get there.
25 When you subtract for the first one, as an example,

Michael Murray - Direct by Mr. Herrera

1 subtract 12:33 p.m. from 8:37 p.m., you have eight hours
2 and four minutes. The four minutes you have to divide
3 by 60 minutes to get a decimal number. In this case, it
4 results in 8.07 rounded to two decimal places.

5 Q. Why do you have to convert the punches to a decimal
6 number?

7 A. It makes it much easier to multiply the rate in
8 order to compute the total amount of dollars. So it has
9 to be in decimal form. If you gave it a time stamp and
10 tried to multiply it by number, the computer wouldn't
11 understand what you were trying to do.

12 Q. Let's go to March 17 then. Do the punches that we
13 have on the screen and in the PowerPoint match the data
14 your summary has for March 17, 2020?

15 A. Yes, it does.

16 Q. We see here, Mr. Murray, for these shifts that
17 BD30. What, if anything, does it tell you how she was
18 compensated?

19 A. It indicates 30 minutes were deducted each day for
20 each day she worked for purposes of the payroll data.

21 Q. Does your summary maintain that 30-minute
22 deduction?

23 A. The summary does not include the values in the
24 exception code.

25 Q. Why not?

Michael Murray - Direct by Mr. Herrera

1 A. I was instructed by the attorney to just look at
2 the in punch and the out punch in order to determine the
3 hours per day.

4 Q. Are you saying that your summary relies entirely on
5 the punches as opposed to the deductions in column R in
6 order to determine the amount of time worked each day?

7 A. That's correct.

8 Q. So if Ms. Wakefield had punched out for lunch,
9 would the totals be based on those punches as well?

10 A. Yes. If she punched out, then the math would work
11 out to account for the time she wasn't on the clock.

12 Q. All right. Let's continue on with Ms. Wakefield.
13 So now let's step to query three, Mr. Murray. We'll
14 return to your spreadsheet.

15 If I wanted to find Ms. Wakefield's values in
16 query three, where would I go?

17 A. To find the source data for the values?

18 Q. No. The values in your sheet. If I wanted to find
19 where in query three Ms. Wakefield is addressed on,
20 where would I go?

21 A. You would click on the sheet 03 time data HRS by
22 day C.

23 Q. I'm going to do that now. I'm also going to search
24 for Ms. Wakefield. Here she is.

25 Let's see if we can find the same pay period

Michael Murray - Direct by Mr. Herrera

1 for her, March 28, 2020. I'll scroll a little more
2 carefully this time.

3 (Pause in the proceedings.)

4 Q. I'm going to highlight rows 556714 through 556723
5 and sheet 03 time data HRS by day and columns C, D, E
6 and F.

7 Mr. Murray, are the values from query one
8 carried exactly into query three for Ms. Wakefield?

9 A. Yes, they are for Ms. Wakefield.

10 Q. What are we learning, if anything, from the
11 inclusion now of this week ending date?

12 A. From the weekend date we know which of the two
13 weeks within the pay period the workdays were falling
14 into.

15 Q. Let's continue moving forward, Mr. Murray. If I
16 wanted to find any data for Ms. Wakefield in query four,
17 where would I go?

18 A. For that you would need to go to the tab name 04
19 time data HRS by day OT C.

20 Q. I'll do that now. Looks like we did some
21 highlighting already so we saved ourselves some time.

22 I'm going to highlight rows 556714 through
23 556723 for columns C, D, E and F.

24 Okay, Mr. Murray, what do we know now about
25 Ms. Wakefield's work for this pay period?

Michael Murray - Direct by Mr. Herrera

1 A. On this case we know the hours she worked each day
2 and know that there were no missing punches that had to
3 be replaced with an average.

4 Q. I'm going to scroll to the right now. There is a
5 column here J.

6 A. That shows the number of hours over eight per day.

7 Q. Referring now to slide ten, Mr. Murray. Does
8 what's on slide ten accurately reflect the data
9 contained for Ms. Wakefield in this sheet?

10 A. Yes, it does.

11 Q. So according to this, if you were to add up these
12 hours for these days, Ms. Wakefield worked 82.36 hours
13 in this pay period. Does that look right to you?

14 A. Yes, it does.

15 Q. If you just counted the amount of time over eight
16 of each of those days, she would have 2.44 hours
17 overtime if you were assessing it by day?

18 A. That's correct.

19 Q. Let's keep moving, Mr. Murray. Let's go to query
20 five. Where would I find Ms. Wakefield here?

21 A. She'll be in the query of the tab named 05 time
22 data HRS by week.

23 Q. I'm going to go ahead and search for her. Here she
24 is.

25 Let's go down to the pay period we are

Michael Murray - Direct by Mr. Herrera

1 focusing on. I'm going to highlight rows 471042 and row
2 471043 and columns B through E.

3 If you could, Mr. Murray, tell me know about
4 Ms. Wakefield's work now during these two weeks.

5 A. We can see how many hours she worked each week as
6 well as total hours for the pay period.

7 Q. Now, if Ms. Wakefield were subject to the 40 rule
8 for overtime, how much overtime would she have worked
9 this week?

10 A. She would have 2.36 hours.

11 Q. If she was subject to the 8/80 rule, how much
12 overtime would she have for this week?

13 A. I would have to see the column for --

14 Q. You can refer back to the earlier slide if you need
15 to?

16 A. 2.44. In that case, the 2.44 hours would be used
17 for the overtime computation.

18 Q. Only if --

19 A. Only if 8/80 is true.

20 Q. Let's go see if it is true. Column M as in Mike,
21 based on what you see there, which rule would apply to
22 Ms. Wakefield for this pay period?

23 A. The 40-hour rule.

24 Q. What is Ms. Wakefield's overtime worked for this
25 pay period?

Michael Murray - Direct by Mr. Herrera

1 A. 2.36 hours.

2 Q. We now see here these rows, Mr. Murray, in column G
3 sum of reg hours. What, if anything, does that signify?

4 A. If it is coming from payroll data, it signifies
5 that she was paid for 77 and a half hours for pay period
6 regular hours.

7 Q. From what you can tell, are there missing hours for
8 Ms. Wakefield's regular time worked in this pay period?

9 A. You would expect 80 hours for the full pay period
10 so there is two and a half hours missing.

11 Q. So her punches say 82.36 but her reg hours paid is
12 77.5?

13 A. Correct.

14 Q. Do you know why?

15 A. I don't know everything that happens when the time
16 data is put into the pay data by the CHMS payroll system
17 but there could be different reasons for it. I don't
18 know.

19 Q. You don't know?

20 A. Right.

21 Q. The difference here in the hours worked versus
22 hours paid, is it coming directly from the face of the
23 records that you reviewed?

24 A. Yes.

25 Q. Mr. Murray, if I didn't take your word for it that

Michael Murray - Direct by Mr. Herrera

1 she only got paid for 77 and a half regular hours, where
2 could I go check?

3 A. You would have to look at the payroll data.

4 Q. Let's do it. Where do I go?

5 A. That would be -- this one, the payroll would have
6 to be from the data supplement that included the March
7 2020 data.

8 Q. I'm going to save ourselves some time, Your Honor,
9 I'm going to go to a sheet within JX53 called friends PR
10 totals. Do you recognize this sheet, Mr. Murray?

11 A. Yes. It's one of the pay data sheets we were
12 provided.

13 Q. Which facility, if you know, does it relate to?

14 A. Brighton, also called Friends. It's short for
15 something.

16 Q. Based on the dates you see here at the top, would
17 you think Ms. Wakefield's March 28 2020 pay data is
18 here?

19 A. Yes, if you scroll down.

20 Q. I am going to represent to you that I looked before
21 we came and I know exactly which row it is in so we will
22 save ourselves some time.

23 Let the record reflect that I will highlight
24 4422 in the sheet friends PR totals which is contained
25 within JX53.

Michael Murray - Direct by Mr. Herrera

1 Mr. Murray, based on the data in your sheet,
2 is it accurate based on the pay that Ms. Wakefield was
3 paid for 77 and a half regular hours in the March 28,
4 2020 pay period?

5 A. Yes. In this case, you see the pay date April 8,
6 2020. The pay period ended on March 28, but she wasn't
7 paid until April 8.

8 Q. How do you know that?

9 A. That's in the rules. If you look in the appendixes
10 but it's in the methodology and is confirmed by the
11 CHMS.

12 Q. So the pay period included on March 28, 2020 but
13 the paycheck was not issued until April 8?

14 A. Correct.

15 Q. If you can turn to slide 12, Mr. Murray. Did I
16 accurately pull from what you can tell Ms. Wakefield's
17 data into that sheet to address the issue of reg hours
18 paid?

19 A. It looks the same, yes.

20 Q. Let's keep moving. Let's go to query six in your
21 sheet, Mr. Murray. I'm going to search for
22 Ms. Wakefield here as well. Found her already.

23 So in row 246909 for Ms. Wakefield, what is
24 being shown on the screen in front of you for 06 time
25 data HRS by max WE?

Michael Murray - Direct by Mr. Herrera

1 A. These are the totals by pay period, total hours
2 worked, as well as the regular hours, unpaid regular
3 hours that was found in the payroll data.

4 Q. So, Mr. Murray, we saw earlier if you add up the
5 punches for Ms. Wakefield, she worked 82.36 hours this
6 pay period. According to the rule for this facility at
7 this time, what should her overtime hours be for this
8 pay period?

9 A. It should be the OT hours by week, which is
10 column D, 2.36 hours.

11 Q. Column H, Mr. Murray, it says 2.5 there for unpaid
12 REG hours by max WE date. Where does that come from?

13 A. That's coming from the payroll data. I looked at
14 the 77.5 REG hours, subtracted that from 80 and derived
15 2.5.

16 Q. So you are saying because of the pay data for
17 Ms. Wakefield shows 77.5, your summary is showing that
18 there is a difference of 2.5 regular hours to get to the
19 80?

20 A. That's correct.

21 Q. Let's go to query seven for Ms. Wakefield. I'm
22 going to search for her now.

23 Let's go to the relevant pay period March
24 2020. I'm going to highlight row 246909 and 07 time
25 data OT HRS 8/80 rule. Can you tell us what is

Michael Murray - Direct by Mr. Herrera

1 happening for Ms. Wakefield in query seven?

2 A. Column H now shows the overtime hours computed
3 based on the 8/80 rule. You can see the 2.36 because
4 the 8/80 rule does not apply to her.

5 Q. Because it does not apply to her, what overtime
6 hour figure will be carried forward into the back wages
7 computation?

8 A. It will pick up the value in column 2, OT hours by
9 week.

10 Q. So the number of hours over 40?

11 A. Yes or 80 for the pay period. Each week hours over
12 40 added up to the pay period.

13 Q. Mr. Murray, let's go to all back wages combined and
14 search for Ms. Wakefield. She is here in row 255026.
15 Let's go to the relevant pay period March 28, 2020.
16 This is row 254952 and the sheet all back wages
17 combined. Walk me through what we are seeing for
18 Ms. Wakefield, please.

19 A. We see where she worked in that pay period, what
20 department, what is the primary department for that pay
21 period, paid regular rate as well as computed regular
22 rate which would have come from query eight and we see
23 the OT straight credit and OT premium credit and also
24 totals of those credits.

25 If you keep scrolling, you will see the

Michael Murray - Direct by Mr. Herrera

1 computed overtime hours and the computed straight pay,
2 overtime straight pay, computed overtime, premium pay
3 earned, as well as adding up those two values.

4 If you keep going, you will find back wages at
5 the very end, as well as unpaid regular wages based on
6 the 2.5 hours we were discussing earlier.

7 Q. So the total back wages for Ms. Wakefield for this
8 pay period is column S?

9 A. That's correct.

10 Q. How much is it?

11 A. \$123.28.

12 Q. Let's check the math, Mr. Murray. Before we do
13 that, because Ms. Wakefield's pay regular rate, computed
14 regular rate are identical, \$20.41, is query eight
15 applying here?

16 A. Query eight creates this number. She did not have
17 any bonuses or pay differentials. It would have
18 increased the computed regular rate.

19 Q. So for this pay period at least, her paid regular
20 rate equals the computed regular rate according to the
21 values you saw for pay received for hours worked?

22 A. Correct.

23 Q. Okay. If you could refer down to slide 16,
24 Mr. Murray, as we go through this. Using the slide, if
25 you can, walk me through how the math works. How did we

Michael Murray - Direct by Mr. Herrera

1 get to \$123.28 for Ms. Wakefield?

2 A. We have the rate, \$20.41 rate and we have 2.36
3 overtime hours due or earned. Here this slide shows
4 that computing the straight time portion of the overtime
5 earned in the premium portion of the overtime earned in
6 both cases based on that \$20.41 rate, straight time 2.36
7 hours times \$20.41, we get \$48 and round up to 17 cents.

8 For the premium portion of the overtime
9 earned, it's 2.36 hours times the rate times .5 so
10 that's \$10.21 per hour and that yields \$24.10 if we
11 round it up.

12 Then there is a separate computation for the
13 regular hours due. That's going to be the two and a
14 half hours of unpaid regular hours times the regular
15 rate of \$20.41 which is fifty-one dollars and two and a
16 half cents, round it up to three.

17 We take these three dollar amounts: \$48.17,
18 \$24.10 and the \$51.03, we add those all up, accounting
19 for the decimal places, you'll get a total of \$123.28.

20 Q. The math looks right?

21 A. Yes.

22 Q. Did I capture all the analyses in this line of
23 questioning for the back wages due to Ms. Wakefield for
24 this pay period?

25 A. Yes, overtime, regular hours due and the different

Michael Murray - Direct by Mr. Herrera

1 rates.

2 MR. HERRERA: Your Honor, I have another
3 example for the Court. I don't know if you want to take
4 a break. It's going to be a while.

5 THE COURT: We're a little earlier. Let's do
6 it now. We'll take ten minutes. We are going to 4:30
7 today. Do you have a witness to go on the Zoom?

8 MR. HERRERA: I do, Your Honor.

9 THE COURT: I'm going to get my Zoom iPad,
10 too. We'll take our ten minutes.

11 (Whereupon, a break was taken.)

12 THE COURT: Are you ready to continue?

13 MR. HERRERA: Yes, Your Honor.

14 THE COURT: You may proceed.

15 Q. All right, Mr. Murray, we are going to do another
16 example. If you could jump ahead to slide 27 in the
17 PowerPoint, please.

18 This time, Mr. Murray, I want to focus on an
19 employee named Danika, D-a-n-i-k-a, Jones, J-o-n-e-s for
20 a pay period ending January 14, 2023.

21 A. Okay.

22 Q. Let the record reflect I found Ms. Jones' record
23 and all back wages combined at row 124573. I'm going to
24 open it up and I'm going to highlight row 124571.

25 Mr. Murray, I'm going to scroll to the right

Michael Murray - Direct by Mr. Herrera

1 to column S, is Ms. Jones according to your summary owed
2 any back wages for this pay period?

3 A. Yes. It shows \$107.04 in back wages.

4 Q. I going to try to move this through quickly. If I
5 wanted to find her, to find her hours by day, where
6 would I go?

7 A. That should be in the tab named 01 time data HRS by
8 day total B.

9 Q. Before we go there, I want to found out what the
10 workdays are. Go to query four and go to the day data.
11 I'm going to search for Ms. Jones in query four. In B
12 04 time data HRS by day OTB.

13 Her data begins at 222 -- row 222373. I'll
14 scroll down. If I wanted to find a pay period for
15 Ms. Jones on that date, which column would I look at?

16 A. You would look at column C max week ending date.

17 Q. I'm going to highlight rows 223524 through row
18 5223527 and the sheet 04 time data HRS by day OTB.

19 Based on this, Mr. Murray, which days did
20 Ms. Jones work during this pay period?

21 A. She worked January 11, 2023 through January 14,
22 2023.

23 Q. Just those four days?

24 A. Yes.

25 Q. Lets go back to query one. I'm going to search for

Michael Murray - Direct by Mr. Herrera

1 her in the sheets you identified earlier, sheet B for
2 query one. I'm going to scroll down. Time data for
3 January 2023. I'm going to highlight rows 219938
4 through 219941.

5 Tell me what does the data I highlighted
6 signify to you?

7 A. It is showing total number of hours worked each day
8 from the time data.

9 Q. Is this saying Ms. Jones worked for 16.57 hours on
10 January 1, 2023?

11 A. January 11, 2023.

12 Q. January 11. Thank you. Is that accurate?

13 A. Yes.

14 Q. This comes from where, these figures 16.57 through
15 16.27 in the last row?

16 A. It comes from the time punch data.

17 Q. Let's go find it, Mr. Murray. If I wanted to find
18 her punches for these four days, where would I go?

19 A. You would go to data supplement from March 2023,
20 JX58.

21 Q. I'm in JX58 and going to go to time data. Which
22 file, Mr. Murray?

23 A. The 2023, last one.

24 Q. I'm going to open it now. I'm going to search for
25 Ms. Jones' name. Here she is, Mr. Murray, beginning at

Michael Murray - Direct by Mr. Herrera

1 row 2718. Let's find her punches. January 11, 2023
2 through January 14, 2023. I'm going to highlight rows
3 2718 through 2721 in columns O, P, Q and R in
4 spreadsheet title 2023 from JX58.

5 What, if anything, can you tell me about
6 Ms. Jones' work from the punches we are seeing?

7 A. I see she worked four days, they were overnight
8 shifts roughly 2:30 in the afternoon on the beginning
9 day to seven a.m. the following day.

10 Q. What is happening in the exceptions cells for
11 Ms. Jones here?

12 A. Because she is working long shifts, there were two
13 break deductions you see DB30 and DB30.

14 Q. How much time was deducted from Ms. Jones' punch
15 time in the defendants' time data according to this?

16 A. It would have been for the first three days one
17 hour each day on the 14 -- I think you need to highlight
18 one more record, row 2723. There are two records for
19 the 14.

20 Q. Thank you.

21 A. That indicates that there was one 30-minute break
22 deduction for that day.

23 Q. Let's compare it to what's in your sheet,
24 Mr. Murray. Can you go to slide 28, please.

25 A. Okay.

Michael Murray - Direct by Mr. Herrera

1 Q. Do the values in your sheet match the punches shown
2 on the screen?

3 A. Yes. If you do the math and subtract the times,
4 you'll get the numbers indicated in the slide.

5 Q. All right. Let's walk forward. Let's go back to
6 your computations sheet. We'll go to query three. Time
7 data HRS by day B and look for Ms. Jones.

8 I'm going to highlight rows 223524, 223527.
9 What are we seeing here on the screen, Mr. Murray?

10 A. We're seeing here the total hours per day for the
11 four days in question, January 11 through January 14.

12 Q. Does that match what we saw in query one?

13 A. Yes.

14 Q. Let's keep moving forward. Let's go to query four,
15 the B section of query four. We highlighted this
16 earlier, if you recall?

17 A. Yes.

18 Q. What can you tell me about Ms. Jones' overtime
19 hours for these four days according to query four?

20 A. So if you're looking at the hours over eight per
21 day, she actually has over eight hours of overtime, over
22 eight hours per day.

23 Q. If you look at slide 30, Mr. Murray, does that
24 accurately aggregate the hours she worked on these four
25 days and the overtime hours, at least as you consider

Michael Murray - Direct by Mr. Herrera

1 it, by day for Ms. Jones?

2 A. Yes, it looks accurate.

3 Q. Let's go now to query five. Search for Ms. Jones
4 here. Let's find her January 2023 values.

5 I'm going to highlight row 229170 for
6 Ms. Jones. Because if you believe the punches, she
7 worked 65.44 hours. Based on the rule for her facility,
8 what would her overtime hours be for this week?

9 A. The 8/80 rule does not apply so it would be 25.44
10 hours of overtime.

11 Q. Not the by day figure we just saw in the slide?

12 A. Yes.

13 Q. Let's focus on column G. According to what is in
14 column G, what can you tell me about the number of
15 regular hours Ms. Jones was paid for this pay period?

16 A. She was paid for 40 regular hours for this pay
17 period.

18 Q. Because of that, will your summary calculate any
19 unpaid regular hours for Ms. Jones for this week?

20 A. It should not. The logic will consider 40 hours
21 for one week. There are certain records in the pay data
22 that are just one week long. It adjusts. It will not
23 subtract from 80. It will subtract the regular hours
24 from 40. In this case, there is zero as a result.

25 Q. If I wanted to check you on this, where would I go

Michael Murray - Direct by Mr. Herrera

1 in the pay data to see how many hours Ms. Jones was paid
2 for this week?

3 A. For that you would have to go back to the 58
4 folder, the Z58 --

5 Q. JX?

6 A. The JX. You go into the pay data sub folder.

7 Q. Which folder within JX58 pay data should I be going
8 to?

9 A. I think Jones is in Brighton.

10 Q. Yes.

11 A. It would be the friends OL file.

12 Q. Friend DOL?

13 A. Friends DOL.

14 Q. I'll open that. I have found Ms. Jones' record.
15 I'm going to highlight row 9372, Mr. Murray.

16 The pay period ends January 14, 2023. Does
17 that pay date look accurate for that pay period?

18 A. The pay date would have occurred after the pay
19 period ended.

20 Q. If you would like, we can scroll up. Does this
21 look consistent to you, pay period ended January 14 and
22 pay date occurred about nine days letter?

23 A. Yes, about 11 days.

24 Q. What can you tell us about what money Ms. Jones
25 actually received according to the face of defendant's

Michael Murray - Direct by Mr. Herrera

1 pay data from this?

2 A. This is showing she was paid for 40 regular hours,
3 676.22 and she was also paid for 21.75 overtime hours,
4 595.85.

5 Q. So for this pay period, Ms. Jones actually did
6 receive some overtime pay?

7 A. Yes.

8 Q. Let us go back to your sheet to see how it accounts
9 for that, if at all. Let's go quickly to sheet No. 6
10 and search for Ms. Jones for that pay period.

11 A. You need to pick just one cell, not the whole row.

12 Q. User error. Here she is. Here is the pay period,
13 Mr. Murray, January 14, 2023. These values the 65.44
14 hours and 25.44 OT hours by week. Are these carried
15 forward from the earlier figures we looked at?

16 A. Yes, they are.

17 Q. Let's go to your back wages sheet. Let's find
18 Ms. Jones yet again where we started. This is row
19 124571.

20 What can you tell me about how your summary
21 accounts for the pay data we just looked at?

22 A. So we can see that in -- you can see the overtime
23 that was paid in the OT straight credit and OT premium
24 credit fields. If you add them up, it should equal the
25 amount of overtime that was paid.

Michael Murray - Direct by Mr. Herrera

1 You can see there are 25.44 hours of overtime
2 earned and then if you scroll over to the right, we can
3 see how many dollars she earned. She earned \$430.19 in
4 overtime straight pay plus \$271.70 overtime premium pay,
5 and if you add those together and subtract the credit,
6 there is still some back wages left over, \$107.04.

7 Q. So the back wages for Ms. Jones is the difference
8 between the OT overtime, the 25.44 you calculated
9 according to her rate, and the amount that the
10 defendants actually paid?

11 A. Yes.

12 Q. \$107.04?

13 A. That's correct.

14 Q. Now, for Ms. Jones for this pay period, is her
15 regular rate the computed regular rate?

16 A. No. They are different.

17 Q. Let's go to query eight then, Mr. Murray. Let's
18 find the relevant pay period. I'm going to highlight
19 row 122772. Can you walk me through what is happening
20 here, please?

21 A. We see the paid regular rate which would have been
22 computed by dividing the regular pay by the regular
23 hours at \$16.91. Then there's a computed regular pay
24 rate of \$21.36. So that implies there is some
25 additional differentials or bonus pay that was paid to

Michael Murray - Direct by Mr. Herrera

1 her during this pay period. You have to scroll over to
2 the right to find it.

3 Q. Let's see if we can find it. What's the sum of PU
4 in column R?

5 A. The sum of PU is not actually used in the
6 computations. PU pay is.

7 Q. We have a value in column AM, Mr. Murray, what is
8 it?

9 A. It's \$33.96. It's for differ pay, which stands for
10 differential.

11 Q. Let's keep scrolling. We're now in column BM.
12 What do you see there?

13 A. I see \$212. That is sum of PU pay.

14 Q. Mr. Murray, from what you saw, did the defendants'
15 regular rate include, factor in the PU pay and differ
16 values as it was run at the facility?

17 A. Given that the computed regular rate is higher, I'm
18 going to say no. I have to do the actual math to see
19 exactly.

20 Q. Well, I did the actual math, Mr. Murray. Can we go
21 to slide 35, please. Can you walk me through what is on
22 slide 35, please?

23 A. Sure. Slide 35 shows paid regular rate the \$16.91
24 which we saw before, and the paid regular pay 40 hours
25 at \$16.91 is \$676.22.

Michael Murray - Direct by Mr. Herrera

1 Then we are looking at the computed regular
2 rate which is \$21.36. This is based on the \$594.85 in
3 OT pay that has been backed out by two-thirds. So we
4 get \$396.57 rounded.

5 We also see the \$33.96 in differential pay and
6 the \$212 in PU pay. So all these dollar amounts would
7 have been added up, including the regular dollar amounts
8 and then divided by the total worked hours to get the
9 computed regular rate.

10 Q. So let's go to the next slide, Mr. Murray. That's
11 slide 36. Is that what is happening on that slide?

12 A. So it says hours worked from time data. It's
13 actually from the pay data.

14 Q. I must have made that mistake.

15 A. There's 40 regular hours, 21.7 hours overtime, so
16 the total of 61.75 hours worked in the pay data paid
17 for.

18 So you take that number and you divide it into
19 the total dollar amounts on the previous slide we looked
20 at and that should yield the \$21.36.

21 Q. Does the math look right, Mr. Murray?

22 A. Yes, it looks about right, 1,300 divided by 61,
23 it's just over \$20.

24 Q. Let's tie this all together, Mr. Murray. Let's go
25 back to your back wages sheets. Beginning on slide 37,

Michael Murray - Direct by Mr. Herrera

1 walk me through how we get from the data we just talked
2 about, the OT credit amounts, the amounts you say
3 actually paid to Ms. Jones and back wages due of
4 \$107.04.

5 A. So, using the computed regular rate and the paid
6 regular rate, we can compute the overtime dollars
7 earned, again being overtime straight earned and
8 overtime premium earned. So those calculations are
9 using the \$16.91 regular rate for the straight time
10 earned and \$10.68 for the premium .5 part which is half
11 of 21.36.

12 So we see \$430.19 plus \$271.70 equals \$701.89
13 in total overtime pay earned.

14 If you go to the next slide 38, you can see
15 the OT credit which is based on the pay data. Again,
16 split between the straight portion and the premium
17 portion, the total comes out to \$594.85. Subtract that
18 from the \$701.89 earned and there's back wages left over
19 of 107.04.

20 Q. So, again, Mr. Murray, it's amount earned according
21 to the time data and the person's rate minus the amount
22 actually paid?

23 A. That's correct.

24 Q. Let's go back to slide 37 for just a moment. I
25 know this window. The calculation for the overtime, can

Michael Murray - Direct by Mr. Herrera

1 you explain the two rates that are being used there to
2 multiply against 25.44?

3 A. So the rule that was used when determining the
4 overtime earned, overtime dollars earned is when you are
5 using one and a half times the pay rate, the one part of
6 that one and a half you are using the regular rate,
7 which is regular pay divided by regular hours. In this
8 case it's, \$60.91. That computes the straight time
9 overtime earned and then for the .5 part of that
10 calculation, we are using the computed regular rate
11 which is a little bit higher in this case of \$21.36.
12 Multiply by .5 and then times the same number of
13 overtime hours. Then we add that together for the
14 total.

15 Q. Mr. Murray, are you saying that the computed
16 regular rate, the regular rate you derived after
17 factoring in the shift diffs and bonuses, it's only used
18 to calculate the premium portion of overtime hours?

19 A. That's correct.

20 Q. Just a few questions left, Mr. Murray. I would
21 like to look at a couple examples, no math, just a
22 couple examples in your model where it illustrate the
23 rules you mentioned.

24 I want to find somebody and I think I have for
25 the person that had unpaid regular hours but no overtime

Michael Murray - Direct by Mr. Herrera

1 and, therefore, no back wages are due.

2 A. Okay.

3 Q. I'm going to search for someone named Jennifer
4 Klinger, K-l-i-n-g-e-r. I'm in all back wages combined
5 sheet row 133950. I'm going to go to the pay periods
6 for January 4, 2020 and January 18, 2020. I'm going to
7 highlight rows 133919 and 133920.

8 So for this first pay period, Mr. Murray, the
9 one in 133919, do you see Ms. Klinger has unpaid regular
10 hours?

11 A. Yes, she does.

12 Q. Why isn't she not given any back wages?

13 A. You see the unpaid OT wages are equal to zero. So
14 if there are no overtime wages owed, then unpaid regular
15 hours is not computed or the unpaid regular wages is not
16 computed.

17 Q. This summary does not attribute back wages to pure
18 unpaid regular time divorced from overtime, is that what
19 you're saying?

20 A. Yes.

21 Q. What about the next pay period?

22 A. The next pay period does have overtime -- unpaid
23 overtime wages earned. So the total regular hours are
24 used to compute the unpaid regular wages, which in this
25 case is 4.63 hours which computes to \$92.59.

Michael Murray - Direct by Mr. Herrera

1 Q. Mr. Murray, I want to find an example of a person
2 who was subject to that I think you said five minutes
3 but the average break deduction for someone who never
4 punched out for lunch at any point.

5 I'm going to go to query four, section A. I'm
6 going to search for someone named Mary Cottrill,
7 C-o-t-t-r-i-l-l. Do you see someone by that name, sir.

8 A. Yes, I do.

9 Q. So, for Ms. Cottrill, do you see any indication
10 that break time or an amount was deducted from her wages
11 for break time?

12 A. Yes. That's in column H. It's called computed
13 break time.

14 Q. What is column H?

15 A. This is used for -- this query uses a sub query to
16 determine if an employee never punched out for a break.
17 If that is the case, then it subtracts about five
18 minutes which is .0816 minutes in decimal form. It
19 subtracts that from their time determined from the
20 timestamps to come up with a total hours less break
21 column which is column I.

22 Q. So, Mr. Murray, are you saying even though
23 Ms. Cottrill 's punches, for instance, show she worked
24 eight hours on August 22, 2016, your summary only
25 credits her with 7.29 hours?

Michael Murray - Direct by Mr. Herrera

1 A. Yes.

2 Q. Why?

3 A. The attorney instructed me in those cases where
4 employees never clocked out, to apply this deduction for
5 a break time.

6 Q. Mr. Murray, did this application of break time ever
7 mean the difference between an employee receiving some
8 back wages and no back wages?

9 A. It could in some close cases.

10 Q. Let's look at one. Let's go to row 373979. Do you
11 see any indication here that the deduction of those five
12 minutes .0816 reduced OT hours for Ms. Cottrill to zero?

13 A. Yes. She went from 8.03 hours less the break to
14 7.95 hours. So if we were calculating for the 8/80
15 rule, this would yield zero hours for that day.

16 Q. Mr. Murray, I'm going to close these sheets now and
17 do a couple of final questions.

18 Can you tell me, Mr. Murray, where in your
19 summary do you account for the issue of unpaid hours
20 worked?

21 A. Can you repeat the question.

22 Q. Of course. If there are unpaid hours worked at any
23 of these 15 buildings, where in your summary is that
24 reflected?

25 A. So the final sheet will show unpaid overtime hours

Michael Murray - Direct by Mr. Herrera

1 and unpaid overtime hours owed and then, of course,
2 minus the credit if there is any back wages left.

3 Q. Speak into the microphone, please.

4 A. So the final spreadsheet will show the overtime
5 hours that were unpaid. It accounts for that really for
6 the whole model for all the queries, mainly 4, 5 and 6.

7 Q. Mr. Murray, if I wanted to know if an employee at
8 one of these 15 nursing homes had unpaid overtime, could
9 I find it in your summary?

10 A. Yes, you could.

11 Q. Where?

12 A. The quickest way would be that final sheet -- can't
13 think of the name of it now.

14 Q. I think it was back wages combined.

15 A. Back wages combined sheet would show that.

16 Q. Mr. Murray, if I thought that an employee's regular
17 rate was incorrect because it did not account for shift
18 diffs, bonuses, or other forms of pay for work
19 performed, could I find that in your model?

20 A. Yes, you could.

21 Q. Where?

22 A. Most easily found in query eight.

23 Q. Mr. Murray, if I had a concern that I worked at
24 more than one building in the same pay period, could I
25 find data on that issue reflected within your summary?

Michael Murray - Direct by Mr. Herrera

1 A. Yes, you could.

2 Q. Where?

3 A. You would have to look at the sheets prefixed with
4 a letter A. Those were indicating employees who worked
5 in multiple buildings.

6 Q. Mr. Murray, I'll ask you to do the math. If for
7 some reason the amount of back wages you calculated
8 totaled were doubled, what would the total amount due
9 be?

10 A. The total back wages doubled would be about 41
11 million.

12 Q. Mr. Murray, how hard was this task?

13 A. It was -- took a lot of time, over a five-year
14 period.

15 Q. I understand it took a lot of time. How much time
16 did it take?

17 A. A conservative estimate, at least 100 hours a year,
18 probably more than that. Some years -- some periods of
19 time were less busy. The case wasn't front and center
20 but I would say between 500 and a thousand hours total.

21 Q. Over the years, Mr. Murray, how many tweaks or
22 modifications have you made to your summary?

23 A. So, dozens. Every time we received data, we would
24 have to incorporate the new data. There might be new
25 fields. Some of that data might require tweaks to some

Michael Murray - Direct by Mr. Herrera

1 of the criteria that was used.

2 Q. Why did you make these modifications?

3 A. If we had any difficulty getting new data in, we
4 would have to change the database to fit it, usually
5 adding extra columns, most likely the pay data table.

6 There were other things that we realized as we
7 went on like people were working at different facilities
8 and we had to add some logic for that.

9 When you started talking about the gap time, I
10 realized there was no way to tell definitively how many
11 regular hours were paid per week so we had to come up
12 for criteria addressing that. There were a lot of
13 issues like that that contributed to making changes.

14 Q. Was the ultimate goal here, Mr. Murray, to get an
15 accurate figure for the time worked versus the pay
16 received for that work?

17 A. Yes, that was the ultimate goal.

18 MR. HERRERA: Nothing further, Your Honor.

19 THE COURT: Cross-examination.

20 CROSS-EXAMINATION

21 BY MR. SCHWARTZ:

22 Q. Good afternoon, Mr. Murray. My name is Jake
23 Schwartz. We met briefly in the hall.

24 I want to see if I can sort of simplify if not
25 for the judge's benefit but for my for purposes of this

Michael Murray - Cross by Mr. Schwartz

1 cross-examination what exactly it is you did.

2 A. Okay.

3 Q. Let me do my best to try to really kind of winnow
4 this down.

5 No. 1, you needed to look to see if an
6 employee worked more than 40 hours in a week?

7 A. That was part of it, yes.

8 Q. If the answer to that was yes, then the next
9 question is, is this an employee who is entitled to be
10 compensated for the hours worked over 40 at time and a
11 half under the Fair Labor Standards Act, correct?

12 A. Yes, for those employees subject to the 40 hour
13 rule as opposed to 8/80.

14 Q. Either over 40 or over 80, such that they would
15 have been entitled to overtime by virtue of the fact
16 they were not exempt?

17 A. Yes.

18 Q. If the answer to No. 1 is yes, the person worked
19 more than 40 or 80 and the answer to No. 2 is yes, this
20 is a person under the law who is entitled to be paid
21 overtime, the next step is what was the regular rate
22 that they should be paid for those hours over 40, right?

23 A. Yes.

24 Q. And the final step was just calculating hours
25 worked by the regular rate?

Michael Murray - Cross by Mr. Schwartz

1 A. The final final step would be that and then seeing
2 if any overtime was already paid and using that as a
3 credit compared to what was earned.

4 Q. Generally speaking, was a person owed overtime, are
5 they nonexempt, what is the regular rate, and then what
6 are they owed?

7 A. Correct.

8 Q. That's basically what you did?

9 A. Yes.

10 Q. Let's take No. 1 first. Is the person -- did that
11 person work more than 40 compensable hours, right?

12 A. Yes.

13 Q. Or 80. I'm just going to use 40. We know we are
14 talking 40, 80. Was that person entitled to overtime
15 for a particular workweek or weeks because they worked
16 more than the threshold?

17 A. Yes.

18 Q. That could happen one of two ways from I see it for
19 purposes of your role. The first way is the document
20 itself, the hours shown in the document established that
21 the person worked more than 40, that would be one way to
22 make that determination, right?

23 A. From the time records?

24 Q. Yes.

25 A. Yes.

Michael Murray - Cross by Mr. Schwartz

1 Q. The second way that determination could be made is
2 that based on the Department of Labor's investigation
3 even if the person worked less than 40 on the records if
4 somehow there was uncompensable time worked, that should
5 be added to the total such that it brings it over 40?

6 A. So you're saying there was time not shown in the
7 time data and somehow we know about it, we can add that
8 to the employee's total for the week and that can take
9 it over 40?

10 Q. Right.

11 A. Sounds right.

12 Q. And in your work in coming to the conclusions you
13 came to as to No. 1, did the person work over more than
14 40, you found that that was the case based on both
15 models, the hours showed more than 40 and two, the
16 Department of Labor's findings in its investigation
17 regarding unpaid time also supported employees working
18 over 40 being paid for work over 40?

19 A. Referring to the rate reduction, I'm not familiar
20 with the investigation part.

21 Q. Thank you for the clarification. So as I
22 understand it, correct me if I'm wrong, there are two
23 different ways that the employee by virtue of the
24 Department of Labor's investigation could have worked
25 more than 40 despite the document itself saying they

Michael Murray - Cross by Mr. Schwartz

1 didn't, okay.

2 One way is the investigation established that
3 employees were denied their full 20-minute paid breaks
4 and an average of 15 was reached and when multiplied
5 over days and weeks, that brought some people over 40?

6 A. So for the work I did, I simply looked at the time
7 sheets and subtracted -- just the timestamps. I didn't
8 consider the rate reductions in the exceptions field.

9 In many cases, that would have the effect of
10 adding 30 minutes for each workday where there was maybe
11 30 minutes deducted in the exceptions field from the
12 number of hours indicated by the timestamps.

13 Q. Okay. You tripped me up a little bit there and
14 that might be me.

15 As I understand it, there are two different
16 categories of -- primarily two different categories of
17 uncompensable time that was ultimately added to the
18 hours recorded as worked such that it would bring it
19 over 40.

20 One way was that employees were deprived of
21 their full 20-minute paid breaks and the DOL, therefore,
22 averaged that down -- there was a five-minute shave off
23 there that was added into the time they should have been
24 paid for.

25 A. The five minutes had to do with -- I don't

Michael Murray - Cross by Mr. Schwartz

1 understand the legal reasoning behind it but there was a
2 requirement for my work that if it was indicated that
3 the employee never clocked out for an unpaid break, they
4 just had an in timestamp and out timestamp each day for
5 the entire they worked there, never clocked out for a
6 break, in those cases, I was to subtract about five
7 minutes. I don't know the legal reason but that was the
8 instruction I was provided.

9 Q. That subtraction increased the amount of time that
10 it appeared the employee wasn't paid for?

11 A. It would decrease the amount of time it appeared
12 they worked.

13 Q. Correct.

14 A. So that would have the effect of decreasing the
15 amount of time that it would appeared to have been
16 unpaid by five minutes per day.

17 Q. We'll come back to that because I'm still a little
18 confused. Let's talk about the lunch then. I think
19 that's easier.

20 We know that there were times where employees
21 had an automatic lunch break deducted from their hours
22 but the Department of Labor determined that employees
23 had worked through their lunch and, therefore, weren't
24 paid for that time?

25 A. That's my understanding.

Michael Murray - Cross by Mr. Schwartz

1 Q. In your analysis in those instances, therefore,
2 gave the employee another half-hour for that day, for
3 each day of that week coming to 2.5, that would have
4 brought some of the folks over the threshold to the
5 point where even though the records said they worked
6 less than 40, add the 2.5 lunch brought them over 40?

7 A. Yes. If you are looking at the time data, the raw
8 timestamps, if you don't have that 2.5 hour deduction --
9 let's take an example.

10 Let's say the time punches show you worked 41
11 hours but then you subtracted two and a half hours lunch
12 time, you would end up with 38.5 hours. So in the pay
13 records it would show 38.5 hours of paid regular time
14 but no overtime.

15 Now, if we put the two and a half hours back
16 in, we are now at 41 hours, now the computations would
17 say they were owed one hour of overtime, in addition
18 there would be one and half hours unpaid.

19 Q. I think we're on the same page. So if the payroll
20 records showed the person was paid for 38.5 hours in
21 that workweek and wasn't paid any overtime but the
22 assumptions you were asked to do said bring in 2.5 hours
23 of lunch for that 38.5 to bring them to 41, thus
24 entitles them to unpaid overtime for that one hour, as
25 well as the gap for regular time from the 38.5 to 40?

Michael Murray - Cross by Mr. Schwartz

1 A. Correct. Exactly.

2 Q. So in your assumptions then, Mr. Murray, if that
3 was a mistake, that you shouldn't have included those
4 lunchtime hours in there, then your ultimate conclusion
5 would be reduced?

6 A. So if the attorney changed their instructions and
7 asked me to go ahead and subtract that time, you would
8 end up with less back wages computed.

9 Q. Now, I think the document you were shown to
10 establish your refreshing your recollection regarding
11 certain percentages, I think it was, had in it a line
12 item of how many employees with a plural possessive pay
13 records did you review and I think it said something
14 like 9,000, something like that?

15 A. That sounds small. The most current data as of
16 2023, there were 2,600,000 or so time records and it's
17 going to be in the hundreds of thousands for the payroll
18 records. It's probably 400,000.

19 Q. I thought I heard you say it was about 17,000
20 different employee units but I was told maybe you didn't
21 say that.

22 A. 17,000 might refer to just those employees who were
23 working in multiple locations because that was a small
24 subset.

25 Q. Whatever that number ends up being, Mr. Murray, for

Michael Murray - Cross by Mr. Schwartz

1 purposes of the line of questioning, we know it's in the
2 thousands, right?

3 A. Okay.

4 Q. Do you know as part of the Department of Labor's
5 investigation that led to this lawsuit how many
6 employees the Department of Labor spoke with to
7 come -- to gain the information that they gave to you?

8 A. No, I don't know how many.

9 Q. If I told you it was less than 50, would that
10 surprise you?

11 A. If you are talking to individual people, it would
12 be hard to talk to thousands.

13 Q. So it wouldn't surprise you?

14 A. It would not surprise me.

15 Q. You understand that part of the government's theory
16 of why this number of damages is owed is based on what's
17 generally referred to as a representative case? Are you
18 familiar with that term?

19 A. Like a sampling or representative sample?

20 Q. Yes.

21 A. Okay.

22 Q. So in doing that if there isn't substantial
23 evidence to support the notion of representative status
24 talking about the lunch deductions for now, then the
25 vast number that you applied that to would no longer be

Michael Murray - Cross by Mr. Schwartz

1 appropriate based on the evidence because you don't know
2 whether everybody took a lunch or not?

3 A. The data won't show, no.

4 Q. Right. Now, let's go to No. 2, the issue of is the
5 employee exempt or not. You had nothing to do with
6 making those determinations?

7 A. So the attorney at the time way back in the
8 beginning, she provided a list of departments she said
9 were exempt and I should exclude from the back wage
10 computations.

11 To the best of my recollection, they were the
12 administrator departments, there are three
13 administrators but there were two that had some
14 additional letters after them, so I put logic in there,
15 I added a field to exclude these records and ran a query
16 to update that field. If they were administrator, when
17 they were doing the time. They could have been a
18 different position at other times.

19 For those time data records, it would indicate
20 exclude and then they were no longer part of the
21 calculations.

22 Q. So it sounds like to me -- let me go back to my
23 earlier question. The determination as a legal issue of
24 whether someone should have been exempt or not, you had
25 no role in that?

Michael Murray - Cross by Mr. Schwartz

1 A. That's right.

2 Q. You were just told don't count these people in your
3 calculations?

4 A. That's correct.

5 Q. Leaving you with no choice but to include every
6 other classification?

7 A. Yes, that's the reverse.

8 Q. So every classification was included as being
9 nonexempt other than administrators in your final
10 analysis?

11 A. Yes.

12 Q. So if it is determined that there wasn't
13 substantial evidence to support a representative status
14 in each category that was determined to be nonexempt,
15 your final calculations would be wrong?

16 A. They would change. The numbers -- the math would
17 still be right.

18 Q. If certain people were not entitled to be included
19 in your overtime calculations, that number would come
20 down?

21 A. Yes.

22 Q. In the course of this litigation, we were provided
23 with three different versions of the ultimate summary.

24 When I say the "ultimate summary," I'm talking
25 about the document that you were shown early on in

Michael Murray - Cross by Mr. Schwartz

1 your -- not early on in your testimony but sometime in
2 your testimony that there was roughly \$20.5 million of
3 unpaid wages owed to a certain number of employees.

4 A. Yes.

5 Q. We saw three separate versions of that. The first
6 version included the administrators in it?

7 A. It included a few of them. There were so records I
8 was using the department field and the pay data to
9 indicate what department people were working for a
10 particular pay period. Sometimes it was no value there.
11 It was just blank.

12 So the way that Microsoft Access works is if
13 it says pick all the records that are not
14 administrators, it would pick records that are blank
15 because it is not administrator but it turned out those
16 were administrator records. I had to look at the time
17 data to see where they were clocking in as what
18 department and then I was able to update the pay data,
19 an additional field I added so I could have more
20 complete indication of what departments they were paid
21 for and then after that, the logic worked to exclude
22 them completely.

23 Q. That's fair. Just like my earlier question if a
24 group of folks should not have been included as
25 nonexempt and they came out, once you brought out the

Michael Murray - Cross by Mr. Schwartz

1 administrators that should have been included, the
2 subsequent summary had a lower number on it. It wasn't
3 significant but it had a lower number on it because of
4 the errors of them being included in the first instance?

5 A. Yes, it did go down.

6 Q. Kind of a little bit off topic. I think you
7 testified when you were providing your credentials, that
8 you have been at this game for some time?

9 A. Yes. It goes back to the early 2000s when I first
10 started working. I was a contractor with the
11 solicitor's office at the time when they started asking
12 my company to help them with these large files.

13 Q. I was impressed with your credentials. I am trying
14 to establish you have been doing this for a while?

15 A. Not full time, though.

16 Q. I would imagine, Mr. Murray, in the annals of you
17 doing this and looking at pay records, it's pretty
18 ordinary, isn't it, that the pay records that you are
19 given come from a payroll processor?

20 A. Some kind of computerized system.

21 Q. Like an ADP?

22 A. Could be. I had some paychecks.

23 Q. The entities that do that sort of work, other than
24 maybe a mom and pop operation, people aren't just
25 determining what people are paid by looking at their

Michael Murray - Cross by Mr. Schwartz

1 cash register?

2 A. I would assume so.

3 Q. It's pretty typical there is some other entity that
4 is processing the payroll?

5 A. Few cases, I imagine so.

6 Q. It's just not out of the ordinary is what I am
7 trying to say?

8 A. A large company would use a payroll processor
9 wouldn't be surprising.

10 Q. Now, I think you said somebody told you -- I
11 apologize if I got your testimony down wrong -- that
12 employees were supposed to punch out when they took a
13 lunch?

14 A. I recall hearing that from the attorney.

15 Q. When you were told that, was it noted that that
16 practice/policy is in place only if an employee leaves
17 the building as opposed to just going to lunch within
18 the building and not leaving the premises?

19 A. I don't have that distinction.

20 Q. You just don't know one way or the other?

21 A. You certainly can't tell from the data.

22 Q. I think that you sort of answered this on direct
23 but I want to make sure the Court is clear. If somebody
24 didn't work 40 or more than 40 in a workweek or more
25 than 80 in an 8/80 and they received shift differential

Michael Murray - Cross by Mr. Schwartz

1 or bonuses that week for that two-week period but they
2 didn't work overtime, there would be no need to
3 recalibrate the regular rate?

4 A. Correct. If they weren't working overtime, it
5 won't matter.

6 Q. The regular rate only becomes relevant for purposes
7 of having the time and a half formula?

8 A. Yes, that half-hour cut in half.

9 Q. So anybody on the records who didn't work 40 and
10 anybody who the evidence doesn't support should have
11 added in lunch breaks, it wouldn't matter what -- you
12 don't get to that No. 3 when I walk you through the four
13 steps of having to calculate regular rate?

14 A. If it doesn't go over 40, that's correct.

15 Q. We're early on in this case. There hasn't been
16 that many witnesses but we have heard some witnesses say
17 that they weren't paid the promised bonus for taking on
18 an extra shift or they weren't paid a shift differential
19 that they would have been entitled to. Did that factor
20 into your analysis at all?

21 A. No. The only data I had to work with is what they
22 were actually paid in the pay data. If there was
23 supposed to be something there, I have no idea.

24 Q. The only way you could have recalculated the
25 regular rate by virtue of shift differential and/or

Michael Murray - Cross by Mr. Schwartz

1 bonus for taking an extra shift would be if it's
2 reflected on the payroll data?

3 A. Exactly, yes.

4 Q. When it was reflected on the payroll data, you are
5 operating on an assumption that the money was actually
6 received by the employee?

7 A. Yes. My assumption is the payroll data reflects
8 actual paychecks that has all the FICA.

9 Q. So if the paycheck stub shows that information was
10 there, you included it in the regular rate regardless of
11 whether the employee put the money in their pocket?

12 A. So if they didn't get paid what the payroll was
13 saying they got paid?

14 Q. Right.

15 A. The assumption is they got paid all bonuses and
16 differentials.

17 Q. I think you said, and, again, I know it's been a
18 rather long and tedious day, but I think you said there
19 were three different types of miss punch, either a
20 missed punch in, a missed punch out or both?

21 A. Right. If you are looking at the data, that's the
22 three different combinations you would come up with.

23 Q. Okay. Is there a way a person could have been a
24 missed punch out if there was no punch in?

25 A. So both punches are missing in that case?

Michael Murray - Cross by Mr. Schwartz

1 Q. No. If somebody didn't punch in but punched out,
2 wouldn't that punch out show as a punch in?

3 A. It depends on the clock system. I don't know if
4 there's like a slot for in and out or you just punch the
5 clock.

6 Q. You just don't know?

7 A. I don't know. I didn't recall a pattern where
8 there is only missing punch outs, not any missing punch
9 ins.

10 Q. I thought you say there could be a missing punch
11 out if there was a punch in.

12 A. I think so but I would have to confirm by looking
13 at the data to see if there are some instances of that.

14 Q. But would you agree with me generally speaking in
15 your experience that if someone didn't punch in, then
16 there wouldn't be a punch out?

17 A. I concede if they punch out at the end of the day,
18 the machine might mistake that as punch in.

19 Q. That would be typical, wouldn't it?

20 A. I guess so. It had to be a pretty sophisticated
21 machine to know you intended to punch out. It would
22 have to have a button for out.

23 Q. In your analysis, Mr. Murray, did you account for
24 any employees who might have punched in and punched out
25 but never worked?

Michael Murray - Cross by Mr. Schwartz

1 A. No. I couldn't tell that from the data. Two punch
2 times.

3 Q. If there was evidence that included in your
4 conclusions there was an employee who did punch in and
5 didn't punch out and didn't work, you would agree with
6 me they should not have been paid for that time?

7 A. That sounds like a human resources issue but yes.

8 Q. The rules require you have to work to be paid,
9 don't they?

10 A. That's the general understanding, work exchange for
11 pay.

12 Q. I want to kind of wrap my head a little bit around
13 the evidence regarding employees who worked at two
14 different facilities and how you calculated overtime in
15 those instances because that was one I really struggled
16 with.

17 A. Yes.

18 Q. No. 1, we can agree that if the combination of
19 those hours worked at the two facilities didn't exceed
20 the overtime threshold, then it doesn't matter that they
21 worked the two different facilities?

22 A. Right. They would be owed overtime.

23 Q. The only time that becomes germane to your
24 conclusions is if it brings them over the threshold?

25 A. Yes.

Michael Murray - Cross by Mr. Schwartz

1 Q. This is where I'm a bit confused by your
2 methodology. Let's say Mary Jones is an 8/80 person and
3 in week one, she worked 25 hours at North Strabane and
4 20 hours in Mt. Lebanon bringing her to 45 in that
5 workweek but the next week, she only worked 24 hours
6 total. The combined of the two would bring her under
7 80. In your methodology is she owed overtime?

8 A. So just those cases where people are working in
9 different facilities too complicated to figure out
10 whether or not to apply for each week the 8/80 rule, so
11 in this case, this scenario, it would default to the
12 40-hour week rule. So yes, for the week that she worked
13 45 hours, she would have five hours overtime.

14 Q. So even if technically speaking she satisfied the
15 8/80 pay formulation and didn't exceed 80, what is her
16 workweek in essence, in your conclusion she still
17 revolves overtime pay?

18 A. Yes. In that instance is one 8/80 and the other
19 not or both?

20 Q. Let's assume for my hypothetical both are 8/80s.

21 A. Yes. It's simplification for that scenario.

22 Q. Now, I want to go back to No. 2. So No. 1, did the
23 person work more than 40 such that they're entitled to
24 be compensated for those work hours at the appropriate
25 rate.

Michael Murray - Cross by Mr. Schwartz

1 No. 2, are they nonexempt from the Fair Labor
2 Standards Act overtime rules.

3 So you have found yes to No. 1 and you're
4 applying the analysis to No. 2 to everyone but the
5 administrators.

6 Let's assume that the Department of Labor
7 satisfies its burden of representative status and every
8 one of those people that you classified as nonexempt and
9 found are owed money. Let's say that holds up as an
10 issue of law.

11 A. Okay.

12 Q. When you look at those individuals, some of them
13 were paid a salary as opposed to an hourly wage,
14 correct?

15 A. I understand some were paid a salary but from the
16 pay data, I can't tell because it's by hour on the pay
17 data.

18 Q. Let's do this through a hypothetical. Let's say
19 you have somebody who's in the position of the director
20 of nursing and that classification in your computations
21 was determined to be nonexempt, okay?

22 A. Okay.

23 Q. Let's say that they're paid a salary of \$60,000 a
24 year for purposes of the hypothetical I'm walking you
25 through.

Michael Murray - Cross by Mr. Schwartz

1 If they were paid that salary and it meets the
2 salary basis test, and let's say in a workweek, they
3 worked, make math easy, ten overtime hours. The person
4 is properly classified as nonexempt but receives a
5 legitimate salary for purposes of the FLSA of \$60,000
6 and worked ten hours in overtime in a particular
7 workweek. We'll go with 40-hour type of an employee.

8 Walk us through how -- and put aside for the
9 second whether there was any computed premium time at
10 issue.

11 So let's say in my hypothetical, no premium
12 time, person is misclassified as having worked as an
13 exempt employee but was paid a salary of \$60,000 and in
14 a particular workweek, worked ten hours overtime. How
15 would that work in your methodology?

16 A. In the methodology I didn't have to consider
17 whether they were salaried because the pay data would
18 show their salary. The pay data would show as hourly.
19 So we would say \$30 an hour is roughly 60,000 a year.
20 For regular hours for one week would be for 40 hours,
21 \$1,200.

22 The methodology would just go for that \$1,200
23 regular pay, 40 hours, say their rate is \$30 an hour.

24 Then the overtime premium rate for the
25 overtime hours we are saying they worked would be \$45

Michael Murray - Cross by Mr. Schwartz

1 for each of the overtime hours in this scenario.

2 Q. Isn't it a fact, though, Mr. Murray, that if it is
3 a legitimate salary and they have been compensated for
4 all hours worked except for the premium, aren't they
5 only entitled to halftime for the hours worked over 40?

6 You are giving them full time and a half for
7 every hour worked over 40 and if it's a true salary
8 person, they are already essentially paid for that time
9 as straight time, aren't they only entitled to the .5?

10 A. That's a legal question. I'm not familiar with.

11 Q. Fair enough.

12 THE COURT: Let me interrupt for one question
13 from our IT department here. I guess the question is --
14 look I'm not holding you to anything but the way the
15 remote video testimony works is IT has to be the one to
16 facilitate that. The question is where are we in the
17 day? Will we get there? If not today, will they
18 testify tomorrow and what time so they can facilitate?

19 MR. HERRERA: They will not testify today. I
20 will let Your Honor know what time when we leave today.

21 MR. SCHWARTZ: I don't have much more on my
22 cross.

23 THE COURT: I didn't want to interrupt. It's
24 just for IT.

25 MR. SCHWARTZ: You helped me clarify things in

Michael Murray - Cross by Mr. Schwartz

1 my head.

2 THE COURT: You may continue.

3 Q. You don't know as a legal issue what the
4 appropriate rate is to pay for that time spent over 40
5 if the employee was paid a legitimate salary but was
6 misclassified as exempt, is that accurate?

7 A. That's accurate.

8 Q. In your calculations then, I think you already
9 answered this but I want to make sure that the record is
10 clear. In my hypothetical the person was classified as
11 exempt by the company, Department of Labor determined it
12 wasn't an exempt position but they were paid a salary,
13 your numbers would reflect that \$45 number for each hour
14 over 40, not just the .5 piece of it?

15 A. That's correct.

16 MR. SCHWARTZ: Bear with me, Your Honor.

17 (Pause in the proceedings.)

18 Q. This will be really quick. In that same rubric,
19 \$60,000 and legitimate salary, work more than 45 in a
20 regular workweek, we were operating on a set of
21 assumptions that there was no premium pay. When you
22 came to your \$45 number that was our assumption. Are
23 you with me?

24 A. My assumption?

25 Q. Our assumption together.

Michael Murray - Cross by Mr. Schwartz

1 A. That's right.

2 Q. Let's now put in premium pay. That would still in
3 the way that you calculated that \$15 or \$30 rate would
4 go up based upon the premium pay they were entitled to,
5 whatever number it ends up being, and then it would be
6 calculated at the 1.5 rate for the overtime hours?

7 A. Yes, the model as it is now.

8 Q. So in your calculations that bring us to the
9 \$20.5 million, it would include for people who might
10 have been exempt, it would include for those same people
11 a calculation of time over 40 even if salaried at that
12 1.5 rate?

13 A. Yes, 1.5 across.

14 MR. SCHWARTZ: Nothing further.

15 THE COURT: Any redirect?

16 MR. HERRERA: Yes.

17 THE COURT: You may proceed.

18 REDIRECT EXAMINATION

19 BY MR. HERRERA:

20 Q. Mr. Murray, opposing counsel stated during your
21 cross-examination something to the effect of hours
22 worked in your summary was based on your assumption. Is
23 that accurate, sir?

24 A. It doesn't sound accurate.

25 Q. What are the hours worked on your summary based on?

Michael Murray - Redirect by Mr. Herrera

1 A. The hours worked from the time data is based on the
2 time punches. So punch out minus punch in, that's the
3 number of hours worked. For each record you have those
4 up per day, per week, per pay period.

5 Q. Mr. Murray, are any of the substantive values that
6 are output in your summary purely based on your
7 assumption?

8 A. No. They're based on the numbers in the data and
9 the rules that were applied to them.

10 Q. Is that another way of saying, Mr. Murray, that
11 your summary is based entirely on the face of the
12 records from the defendants' payroll system?

13 A. Yes.

14 Q. Mr. Murray, opposing counsel brought up the issue
15 of multi-employee facilities?

16 A. Yes.

17 Q. Remind again how many employees are we talking
18 about in that category?

19 A. I don't know the number of employees but the number
20 of time records is somewhere around 30,000 I think,
21 maybe less. So a small percentage of the 2.6 million
22 time records.

23 Q. Less than one percent?

24 A. Yes.

25 MR. HERRERA: Nothing further, Your Honor.

Thomas Slagle - Direct by Mr. Unger

1 THE COURT: Any recross?

2 MR. SCHWARTZ: No, sir.

3 THE COURT: Okay, sir. You may step down.

4 You are released. Thank you.

5 Counsel, your next witness.

6 MR. UNGER: The Acting Secretary will call

7 Thomas Slagle.

8 THE COURT: Please approach, sir. Raise your
9 right hand.

10 THOMAS SLAGLE, a witness herein,
11 having been duly sworn, testified as follows:

12 THE COURT: Have a seat. Adjust the
13 microphone. Please state and spell your full name for
14 our court reporter.

15 THE WITNESS: Thomas M. Slagle, S-l-a-g-l-e.

16 DIRECT EXAMINATION

17 BY MR. UNGER:

18 Q. Good afternoon, Mr. Slagle.

19 A. Hello.

20 Q. Mr. Slagle, where do you currently reside?

21 A. Kittanning.

22 Q. Are you currently employed?

23 A. Yes.

24 Q. Was there ever a time you were employed at a
25 facility known as Cheswick Rehabilitation and Wellness

Thomas Slagle - Direct by Mr. Unger

1 Center?

2 A. Yes, sir.

3 Q. Do you know what the purpose of today's trial is?

4 A. Not a hundred percent but to deal with unpaid
5 overtime, stuff like that. I'm sure there's other
6 stuff.

7 Q. You mentioned you worked at a facility known as
8 Cheswick Rehabilitation and Wellness. What period of
9 time did you work there?

10 A. 2012 to '17 or '18. I believe that was the
11 timeframe.

12 Q. Approximately five to six years?

13 A. Yes.

14 Q. Why did you leave?

15 A. Working conditions, not getting paid what I was
16 owed and actually found a better position.

17 Q. We'll talk more about that in a second. What was
18 your job title at Cheswick?

19 A. LPN.

20 Q. What does that stand for?

21 A. Licensed practical nurse.

22 Q. As an LPN, what were your daily job
23 responsibilities?

24 A. To pass medications, do treatments such as wound
25 care, respiratory, whatever else was assigned to me at

Thomas Slagle - Direct by Mr. Unger

1 that time, start an IV, help the CNAs with their duties
2 as needed.

3 Q. What kind of -- what is the type of patient that
4 you would see at Cheswick?

5 A. A lot of long-term care, respiratory issues, a lot
6 of infectious wounds depending on what floor, on also
7 depending what you saw.

8 If you were on the second floor, there was a
9 lot more morbidly obese patients you would see there.

10 Q. What floor did you work on?

11 A. Typically the third.

12 Q. What types of patients were on the third floor?

13 A. That would be the infectious wounds, respiratory,
14 lot of dementia. We had like a secure track system so
15 if patients weren't able to use the elevator for their
16 own safety.

17 Q. What level of service did these patients need?

18 A. Well, skilled nursing.

19 Q. You mentioned you are an LPN, do you have to have a
20 license to be an LPN?

21 A. Yes.

22 Q. Where do you get your licensing done, is that
23 through the state?

24 A. Through the state.

25 Q. Were you hourly or salaried as an employee?

Thomas Slagle - Direct by Mr. Unger

1 A. Hourly.

2 Q. Do you recall what your final rate of pay was when
3 you left Cheswick?

4 A. I think around \$17 an hour. I'm not like sure on
5 that.

6 Q. Did you ever work overtime hours while you were at
7 Cheswick?

8 A. Constantly.

9 Q. Were you a full-time employee?

10 A. Yes.

11 Q. What was your typical work schedule?

12 A. 40 hours a week plus overtime.

13 Q. Did you have a particular shift that you would
14 usually work?

15 A. Seven to three.

16 Q. Seven a.m. to three p.m.?

17 A. Yes.

18 Q. Were there any particular days of the week that you
19 would work?

20 A. It was every other weekend and filled in from
21 there.

22 Q. Did you ever work weekends?

23 A. Every other.

24 Q. Were you required to punch in and punch out?

25 A. Yes, sir.

Thomas Slagle - Direct by Mr. Unger

1 Q. Why did you have to do that?

2 A. To keep track of our time.

3 Q. Did you ever work when you were not punched in?

4 A. No.

5 Q. While you were at Cheswick, who was your
6 supervisor, if any?

7 A. It would depend on who the RN was at the time or
8 the DON and ADON.

9 Q. Do you remember any of their names?

10 A. Pat Maher was one of the RNs I worked with.
11 Unfortunately, our DON and ADON, they changed quite
12 often. It's kind of hard to keep remembering them.

13 Q. Understood. Are you familiar with an individual
14 known as Sam Halper?

15 A. Not offhand.

16 Q. Are you familiar with an entity known as CHMS
17 Group?

18 A. No.

19 Q. Are you familiar with any entities that owned
20 Cheswick?

21 A. I just know it changed hands multiple times from
22 the time I was there, even as far as who owns it. I
23 have no idea.

24 Q. While you were working at Cheswick, were you
25 eligible to take lunch breaks?

Thomas Slagle - Direct by Mr. Unger

1 A. Yes.

2 Q. When you were able to take a lunch break, where
3 would you go?

4 A. Typically I wasn't able to.

5 Q. Let's go into that. So you were eligible to take a
6 lunch break as part of your usual shift?

7 A. Yes, 30-minute lunch, two 15-minute breaks.

8 Q. And you said there were times that you wouldn't be
9 able to take lunch?

10 A. Almost every day.

11 Q. Why wouldn't you be able to take lunch every day?

12 A. Staffing issues. We were shorthanded, level of
13 patient care. Typically I had to help with the CNAs
14 duties a lot of times, feeding, changing their briefs,
15 stuff like that.

16 Q. Did you just leave the unit and take lunch if you
17 wanted to?

18 A. You could.

19 Q. What would happen if you did?

20 A. Patient care would suffer.

21 Q. How would it suffer?

22 A. They wouldn't be able to provide patient care for
23 what was needed. If we have people that are -- I'm
24 trying to think of the best way to put this. If they
25 had issues with diarrhea, constantly being wet, things

Thomas Slagle - Direct by Mr. Unger

1 that can cause skin breakdown, feeding, you can only
2 feed one, maybe two people at a time and if you have
3 multiple people there, you have to have someone else to
4 pitch in.

5 Q. So if you left the unit to take lunch regardless of
6 how the patients were doing, would that have an adverse
7 effect, if at all, on any of the patients?

8 A. It could.

9 Q. What sort of adverse effect could it have?

10 A. Dietary. If you left during the times for feeding,
11 they could instead of getting a hot meal and things like
12 that, they would end up with maybe a cold meal and
13 reject the meal. So dietary concerns would not be met.

14 If they have potential for skin breakdown,
15 turning them every two hours, stuff like that, you have
16 to kind of keep up on that. If your aides are
17 overloaded, you have to pitch in.

18 Q. Any other health issues that you can think of that
19 would arise?

20 A. I'm sure there are but right now, I just can't
21 think of any.

22 Q. You had mentioned you frequently had to work
23 through your lunch breaks. Was that every week, every
24 biweekly period? How often?

25 A. Pretty much daily.

Thomas Slagle - Direct by Mr. Unger

1 Q. But there were times you were able to take a lunch
2 break, though, correct?

3 A. Maybe once a week.

4 Q. You had mentioned staffing being an issue. Can you
5 explain what those issues were?

6 A. Not enough staff for the amount of patients to
7 provide proper care.

8 Q. How often was that an issue?

9 A. Per shift.

10 Q. Would this occur on a daily basis that there were
11 staffing issues?

12 A. Quite often.

13 Q. Did the staffing issues have any effect for your
14 ability to take lunch breaks?

15 A. Yes.

16 Q. What was that effect?

17 A. If there's not enough people there to provide care,
18 you have to stay on to continue the care.

19 Q. Were there any minimum staffing levels required for
20 the floor you were on?

21 A. The state has minimum staffing for X amount of
22 patients. You must have a certain amount but that does
23 not take into account acuity, the level of care needed.

24 Q. Explain acuity within the context of the unit you
25 worked on?

Thomas Slagle - Direct by Mr. Unger

1 A. The level of care. You could have a unit where
2 everyone walks, talks, goes to the bathroom and a nurse
3 and two aides is more than enough or you could have a
4 unit where there is high dementia, behavioral issues,
5 infected wounds, things that take a long time to deal
6 with a lot of times and that same amount will not cover
7 what is needed.

8 Q. How many on the third floor where you typically
9 worked, how many LPNs would there be on the floor?

10 A. There should be two.

11 Q. You mentioned there were CNAs on your floor that
12 you worked. How many CNAs would there typically be
13 there?

14 A. There should be three to four.

15 Q. Were there always two LPNs and three to four CNAs
16 on the floor when you worked your shifts?

17 A. No.

18 Q. Level higher or lower?

19 A. Lower.

20 Q. When those numbers were lower, that would affect
21 your ability to take a lunch break, correct?

22 A. Correct.

23 Q. I just want to talk about meal breaks generally.
24 Would you have to punch in and out for your meal breaks?

25 A. No. It was automatically deducted.

Thomas Slagle - Direct by Mr. Unger

1 Q. When you say "automatically deducted,"
2 automatically deducted from what?

3 A. On the time clock they would automatically deduct
4 it from your time.

5 Q. So when you worked through your lunch, the time
6 punches reflect you had actually punched out for your
7 lunch?

8 A. Yes.

9 Q. Even though you physically didn't punch in or out
10 for your lunch?

11 A. Yes.

12 Q. Were you aware of any other co-workers on the third
13 floor who would also have to work through your lunch
14 breaks?

15 A. We all did.

16 Q. How frequently?

17 A. Almost every day. We would fill out a paper that
18 said that we did not get our time for our lunch and we
19 would turn it into whoever the supervisor was.

20 Q. We'll talk about that in a second. This is a
21 frequent occurrence that your co-workers would also have
22 to work through lunch?

23 A. Yes.

24 Q. Are you aware of that being the issue on any other
25 floors?

Thomas Slagle - Direct by Mr. Unger

1 A. Yes.

2 Q. Which floors?

3 A. All of them.

4 Q. But there were times when your co-workers would
5 have the ability to take a lunch?

6 A. Occasionally.

7 Q. When your co-workers would have to work through
8 lunch, if you know, what sort of duties would they have
9 to do when they worked for lunch?

10 A. Continue what they were assigned to do, patient
11 care.

12 Q. When you worked through lunch, did you ever try to
13 get paid for the time that you worked through lunch?

14 A. Yes.

15 Q. What would you have to do to get paid for the time
16 you spent working through your lunch?

17 A. We would have to fill out a sheet that said that we
18 did not get our lunch and turn it in to whoever was the
19 supervisor that night. They would turn it into the
20 office.

21 Q. Who said you had to fill out a sheet?

22 A. We were told that was policy.

23 Q. Policy, who said that?

24 A. Whoever set policy.

25 Q. Do you know HR, direct supervisor?

Thomas Slagle - Direct by Mr. Unger

1 A. We were just handed a memo one day and we were told
2 that's policy.

3 Q. Did that policy come into effect after a change in
4 ownership, if you recall?

5 A. Yes.

6 Q. Do you recall approximately what year that change
7 in ownership occurred?

8 A. No. I know it was towards the end of my work
9 there.

10 Q. The change in ownership we were just discussing,
11 that occurred briefly before the time that you left
12 Cheswick, is that what you're saying?

13 A. A couple years.

14 Q. Were there times you would fill out the form,
15 submit it to where it needed to go and you weren't paid
16 for the hours you worked when you worked through lunch?

17 A. Yes.

18 Q. Approximately how often would that occur?

19 A. Quite a bit, between that and unpaid overtime.

20 Q. We'll get to unpaid overtime in a second. Just
21 relating to the unpaid lunch breaks, when you went and
22 you submitted a form and you weren't paid for the
23 requested time you spent working through your lunch,
24 what would you then do?

25 A. We would have to go to HR and payroll and have to

Thomas Slagle - Direct by Mr. Unger

1 fill out a form for them to correct it.

2 Q. The second form you would have to fill out?

3 A. Yes. We would also have to tell them as well.

4 Usually, they would give us a piece of paper to fill out
5 with dates and stuff.

6 Q. Did they ever give you reasons why they would
7 reject the first form you submitted?

8 A. No.

9 Q. The times you submitted a second form, were you
10 always paid when you submitted that second form?

11 A. Sometimes. After multiple pay periods where it
12 becomes difficult to keep track after a certain point
13 because you have been submitting multiple papers,
14 requests, corrections for multiple pay periods.

15 Q. More often than not were you paid for the time you
16 spent working through lunch and had to submit forms?

17 A. No. Usually shorted.

18 Q. And you said you would have to give up in those
19 instances is that your testimony? Did I understand that
20 correctly?

21 A. I'm sorry. What do you mean?

22 Q. If you were rejected a second time, what would you
23 do?

24 A. We would continue to go in and ask for the
25 corrections.

Thomas Slagle - Direct by Mr. Unger

1 Q. You would go back?

2 A. Go back to HR and ask for them to go back through
3 it and correct it.

4 Q. Approximately how many times would you have to go
5 back to HR?

6 A. I couldn't tell you. It was often.

7 Q. Was there ever a time you stopped going to HR?

8 A. Usually by that point the next checks were coming
9 out and we would have to start getting those corrected.

10 Q. Did you ever try to track your time --

11 A. We tried. The time clocks would just spew out
12 random to us. It looked like random numbers. It was
13 kind of hard to understand or read.

14 Q. Did you ever try to keep track of the time you
15 weren't paid for?

16 A. For a while, yeah.

17 Q. Were you ever paid for that time that you kept
18 track of?

19 A. Not that I'm aware of.

20 Q. Are you aware of other co-workers that had the same
21 issue you were experiencing?

22 A. Yes.

23 Q. Do you remember who those people were?

24 A. Just about all of us.

25 Q. Do you remember anyone by name?

Thomas Slagle - Direct by Mr. Unger

1 A. Sandra Fleming I know had issues with that, a
2 couple supervisors I know, Pat. She had some issues
3 with that. It's been quite a few years.

4 Q. Approximately how many employees do you recall
5 having this issue or co-workers?

6 A. Most of the people I worked with. On my unit a lot
7 of people in the second unit had some issues as well.

8 Q. So you worked with another LPN and three to four
9 CNAs, correct?

10 A. Usually it was two CNAs and usually another LPN but
11 not always.

12 Q. If you know, what would they do when they had
13 issues of not getting paid for the lunch break?

14 A. Same thing as everybody else, go to HR and
15 complain.

16 Q. What, if anything, would happen when they would go
17 down to HR and complain?

18 A. I never really discussed it with them.

19 Q. Was there ever a time you had the opportunity to
20 elevate the complaint elsewhere?

21 A. We were also told to refer to HR and payroll.

22 Q. Did HR and payroll ever give you any substantive
23 information about why they were not paying you for the
24 time you were working?

25 A. They just told us they would look into it.

Thomas Slagle - Direct by Mr. Unger

1 Q. To your knowledge, did they look into it?

2 A. I don't know.

3 Q. You had mentioned you had issues with overtime.

4 What were those issues?

5 A. It wasn't always correct.

6 Q. What wasn't correct about it?

7 A. The time or the pay.

8 Q. Let me ask you this. How did you come to work

9 overtime hours, how would that come about?

10 A. People would not show up for the next shift or they

11 didn't have enough people to cover shifts. Those are

12 typically the two.

13 Q. So let me walk through this. You would finish your

14 shift?

15 A. Yes.

16 Q. And then somebody wouldn't show up for the shift

17 following yours?

18 A. Yes.

19 Q. That's when you would pick up the shift in which

20 somebody didn't show up for?

21 A. They would start asking people to stay or they

22 would mandate you.

23 Q. What does mandate mean?

24 A. Mandatory overtime basically.

25 Q. How often did that happen to you, the mandatory

Thomas Slagle - Direct by Mr. Unger

1 overtime?

2 A. Once a month or so, maybe more, depends. Usually I
3 would just take the shift.

4 Q. How often were you offered the opportunity to take
5 on another shift?

6 A. Almost daily basis.

7 Q. When you picked up those extra shifts, were you
8 always paid for the hours you worked?

9 A. That's where we would have to go to HR. No, we
10 weren't.

11 Q. How often were you not paid for those extra shifts
12 you would pick up?

13 A. After a certain point, it became a little difficult
14 to keep track of that with going to HR on a constant
15 basis.

16 Q. When you would pick up an extra shift, would you
17 have to punch in and punch out again? How would they
18 work?

19 A. No. You would just stay on.

20 Q. Was there any paperwork you had to fill out when
21 you worked an extra shift?

22 A. No.

23 Q. Who would ask you to pick up the extra shift?

24 A. Whoever was the supervisor at the time.

25 Q. When you weren't paid for the extra shift you

Thomas Slagle - Direct by Mr. Unger

1 picked up, what would you do?

2 A. You would go to HR, payroll and ask them to go back
3 through and correct it.

4 Q. Were there any forms you had to fill out?

5 A. Usually it was just your name and whatever pay
6 period that was, piece of paper or something, same as
7 with lunch break.

8 Q. So you would submit the form when you weren't paid
9 for the extra shift you picked up. Were you always paid
10 when you submitted that form when you picked up the
11 extra shift?

12 A. Not always. It became difficult to track after
13 several paychecks.

14 Q. Were there times that you were paid when you picked
15 up the extra shift?

16 A. Sometimes, yes.

17 Q. When you picked up an extra shift, would that be
18 your total hours worked in a week to over 40?

19 A. Yes.

20 Q. Would you ever if you did pick up an extra shift
21 reduce your weekly hours meaning if you picked up an
22 extra shift, you would take a day off?

23 A. No.

24 Q. So typically when you picked up an extra shift, you
25 were, in fact, entitled to receive overtime for the week

Thomas Slagle - Direct by Mr. Unger

1 in which you worked, picked up the extra shift?

2 A. Yes.

3 Q. Are you aware of any other co-workers who had this
4 similar issue?

5 A. Yes.

6 Q. Do you recall who those co-workers were?

7 A. Not off the top of my head. It's been quite a few
8 years.

9 Q. Were there CNAs that had this issues?

10 A. CNAs, LPNs, RNs.

11 Q. Was this a frequent issue that you observed?

12 A. From my understanding, yes.

13 Q. Approximately how often would those unpaid overtime
14 hours go unresolved for you meaning they were never
15 paid?

16 A. Like one or two, usually one per pay period, maybe
17 two, depending on how much I worked over.

18 Q. Did you ever discuss the issue with any other
19 co-workers?

20 A. Yes, we did, a group of us would discuss it. We
21 would usually go down together.

22 Q. When you say go down together?

23 A. To HR, do the same thing every week, ask them to
24 correct it.

25 Q. What, if anything, were you told by HR when you

Thomas Slagle - Direct by Mr. Unger

1 went --

2 A. That would --

3 Q. Let me finish the question so that she can write
4 down your answer. So you would go down to HR and
5 complain with your co-workers. Do I understand that
6 correctly?

7 A. Yes.

8 Q. Do you know if the co-workers had their pay issues
9 resolved?

10 A. I don't know.

11 Q. Did you have any other pay issues while you were at
12 Cheswick?

13 A. Not that I recall, off the top of my head at least.

14 Q. Was there ever a time you stopped picking up extra
15 shifts because you weren't getting paid?

16 A. No.

17 MR. SCHWARTZ: Objection.

18 THE COURT: What's the objection?

19 MR. SCHWARTZ: Leading. He asked him if there
20 were any other pay issues. He said not that I recall.

21 THE COURT: First of all, he answered.

22 Secondly it's not a leading question. Overruled.

23 Q. Were you ever eligible to receive -- let me ask you
24 this. Were you ever offered any bonuses for picking up
25 extra shifts?

Thomas Slagle - Direct by Mr. Unger

1 A. We were offered gift cards.

2 Q. Explain that. How would that work?

3 A. If you pick up an extra shift, you would get like a
4 \$25 gift card to Walmart or Target or something.

5 Q. Who would offer that?

6 A. Whoever like the DON usually or whoever was in
7 charge of the facility.

8 Q. That when that gift card was offered, were there
9 times you took a shift to receive a gift card?

10 A. Yeah. But it wasn't for the gift card. It was to
11 pick up the shift.

12 Q. If you know, was that gift card ever included in
13 your pay stub or your pay records?

14 A. No.

15 Q. Were there times you were offered a gift card but
16 you never received it?

17 A. No.

18 Q. This gift card bonus program, was that offered to
19 other employees as well?

20 A. Yes.

21 Q. Who was offered to it, if you know?

22 A. Anybody that picked up overtime.

23 Q. Approximately how many hours of overtime a week
24 would you work and then not get paid for?

25 A. At least a shift, sometimes two. So eight to 16.

Thomas Slagle - Direct by Mr. Unger

1 Q. Again, there were times that you were paid for the
2 hours?

3 A. Yes, there was. There were times of the pay
4 periods where everything was correct.

5 Q. You had mentioned you left Cheswick. Was that
6 because of the pay issues you were experiencing?

7 A. Among, yes.

8 Q. You had mentioned that there was a change in
9 ownership approximately one to two years before you
10 left, do you recall that?

11 A. Yes, something around that timeframe. It may be
12 more. I'm not sure.

13 Q. These pay issues, would they arise as frequently
14 before that change in ownership occurred?

15 A. No.

16 Q. After the change in ownership, why did you stay at
17 Cheswick for as long as you did despite having the pay
18 issues you just testified to?

19 A. Patient care. A lot of us stayed to provide to the
20 patients that we had. It was more about them than
21 anything.

22 Q. Is there anything else you would like to tell the
23 Court today?

24 A. I don't believe so.

25 MR. UNGER: I have no further questions at

Thomas Slagle - Cross by Mr. Schwartz

1 this time.

2 THE COURT: Cross-examination, counsel.

3 CROSS-EXAMINATION

4 BY MR. SCHWARTZ:

5 Q. Good afternoon. It's Slagle?

6 A. Yes, sir.

7 Q. My name is Jake Schwartz. I'm an attorney for the
8 defendants in this case. I just have a few questions
9 for you.

10 I'm sorry but I didn't catch what you said was
11 your final date of employment.

12 A. 2017, I believe.

13 Q. Do you remember which month?

14 A. No, sir.

15 Q. Was it before or after Christmas?

16 A. I couldn't tell you. I would actually have to look
17 at my résumé.

18 Q. But it would be fair to say it was either late '17
19 or early '18?

20 A. Somewhere in that neighborhood.

21 Q. As I understand your testimony in response to
22 counsel's questions, you aren't certain as to when CHMS
23 became the -- when the ownership changed in the Cheswick
24 Rehab facility?

25 A. Not a hundred percent sure.

Thomas Slagle - Cross by Mr. Schwartz

1 Q. If I told you the evidence would show that date was
2 September 18 of 2017, do you have reason to believe
3 that's not true?

4 A. If you have -- if that's what it was, I'll have to
5 believe you. I do not have that record.

6 Q. I'm not compelling you to believe something you
7 don't know. You have no reason to disbelieve that?

8 A. I don't believe so.

9 Q. So given your -- if you assume I'm right that date
10 September 18, 2017 is the date of the ownership change
11 and you ended your employment there in either late '17
12 or early '18, you only worked there a few months after
13 the ownership changed. Does that refresh your
14 recollection at all?

15 A. I do not know.

16 Q. So if I'm right and you only worked there for a few
17 months, the totality of your testimony regarding working
18 lunches and not being paid the overtime that you believe
19 you should have been paid occurred during that
20 three-month period?

21 MR. UNGER: Objection. Assuming facts not in
22 evidence.

23 THE COURT: What are the facts not in
24 evidence?

25 MR. UNGER: He is making conclusions and

Thomas Slagle - Cross by Mr. Schwartz

1 asking questions about when his time period of
2 employment ended without that fact actually being in
3 evidence.

4 THE COURT: I think he provided testimony
5 enough as to -- he specified he was unable to give a
6 precise date. It's enough for me to understand where he
7 is going on this. There is no jury to risk confusion.
8 You may proceed. Overruled.

9 Q. I just want to make sure the testimony you are
10 giving today -- I think the counsel for Secretary asked
11 this question but the missed lunches and the other
12 instances where you were not paid for your overtime
13 occurred in the limited time after the ownership and
14 your separation?

15 A. I can't agree with that.

16 Q. The issue about the minimum number of nurses that
17 needed to be there, there's two separate parts of that.
18 One is potentially the staffing shortages but not
19 necessarily below the state minimum, you would agree
20 with that, right?

21 A. I'm not sure. I would have to -- I don't remember
22 exactly what the state minimums are. It's been a long
23 time since I had to look at that.

24 Q. That's fine. You agree the state does have a
25 minimum?

Thomas Slagle - Cross by Mr. Schwartz

1 A. Yes, sir.

2 Q. You just don't know what it is?

3 A. Not off the top of my head anymore.

4 Q. When you referred to staff shortages in your
5 testimony, you don't know whether that means from what
6 you said they are actually state minimum staff shortages
7 as you saw it?

8 A. Yes, sir.

9 Q. The only place that you worked at between September
10 18, 2017 and when you left was the Cheswick Rehab
11 facility, correct?

12 A. Could you repeat that, the ending of it.

13 Q. It's been a long day. I'm probably not being as
14 clear in my questions as I should. I want to make sure
15 your testimony today accepting my date of September 18,
16 2017 until you left your employment, all of those weeks
17 you worked at the Cheswick Rehabilitation facility,
18 correct? You didn't work anywhere else?

19 A. I had a second job.

20 Q. Fair enough. For purposes of my question, you
21 didn't work for any of the other entities that were
22 owned by the same entity that owned the Cheswick
23 facility?

24 A. Not that I'm aware of.

25 Q. Were you in your employment after the ownership

Thomas Slagle - Cross by Mr. Schwartz

1 change represented by a union?

2 A. No.

3 Q. You were not okay. That's all I have.

4 THE COURT: Any redirect?

5 MR. UNGER: No, Your Honor.

6 THE COURT: Sir, you are finished. You may
7 step down and leave.

8 Counsel, we have now reached the end of
9 today's trial day. Again, I think both sides did a good
10 job to keep things moving today. We are now heading
11 into tomorrow.

12 Remember, we'll go from 8:30 tomorrow. You
13 requested to be released at or around 3:00. Okay.

14 MR. HERRERA: The question as to the Zoom. To
15 ensure -- I hope you will convey my apologies to the
16 staff -- to avoid having to do that again, she will
17 testify tomorrow.

18 THE COURT: Do you have any idea what time,
19 what order generally?

20 MR. HERRERA: Why don't we say she will be the
21 first witness assuming not there's not one off, the
22 first witness after lunch.

23 THE COURT: Approximately one p.m.?

24 MR. HERRERA: Yes, Your Honor.

25 THE COURT: I'll let them know. I don't know

1 what we'll do with it. I'll let them know. This is a
2 beautiful courtroom but Judge Hardy, Judge Bissoon,
3 theirs are much more functional with the technology. We
4 have old grade school style for us in here.

5 Well done. I thank you for the collegiality
6 you worked for today. We are adjourned for the day.

7 (Whereupon, court was adjourned for the day.)

8 - - -

9
10 I hereby certify by my original signature
11 herein, that the foregoing is a correct transcript, to
12 the best of my ability, from the record of proceedings
13 in the above-entitled matter.

14

15

16 S/ Karen M. Earley

17 Karen M. Earley

18 Certified Realtime Reporter

19

20

21

22

23

24

25